Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX
Vol. I

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,

Petitioner,

—v.—

STATE OF ALASKA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CCURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 17, 1974
CERTIORARI GRANTED DECEMBER 9, 1974

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,
Petitioner,

—v.—

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Date	Proceedings
4/18/67	Deft's original answer
1/ 6/72	Pre-trial Order
1/17/72	Court Minutes re trial by Court—1st Day
1/18/72	Pltf's offered depositions
1/18/72	Court Minutes re trial by Court—2nd Day
1/19/72	Court Minutes re trial by Court—3rd Day
1/20/72	Court Minutes re trial by Court—4th Day
1/21/72	Deft's offer of depositions
1/21/72	Court Minutes re trial by Court—5th Day
1/24/72	Court Minutes re trial by Court—6th Day
1/25/72	Deft's submission of deposition of Bernard Skud by way of cross examination
1/25/72	Portions of deposition of Jim H. Branson submitted by deft by way of cross examination
1/25/72	Court Minutes re trial by Court—7th Day
1/26/72	Court Minutes re trial by Court—8th Day Exhibit and witness list attached.
5/ 3/72	Offer of deposition of Abram Chayes by pltf Deft's objections to same & Court's rulings
5/ 3/72	Pltf's offer of deposition of Raymond T. Yingling, deft's objections & Court's ruling on same
5/ 3/72	Pltf's offer of deposition of Jared Carter, deft's objections & Court's ruling on same
5/ 3/72	Ptlf's offer of deposition of William Terry, Deft's objections & Court's ruling on same

Date	Proceedings
5/ 3/72	Deft's offer of deposition of Ronald C. Naab (2nd deposition), pltf's offer by way of cross examination, Deft's objections to cross examination, deft's offer of redirect examination, and Court's rulings on same
5/ 3/72	Deft's offer of deposition of John B. Skerry, Pltf's offer by way of cross examination, & deft's response to cross examination with no ruling by the Court
5/ 3/72	Deft's Offer of deposition of William T. Studdery, pltf's offer by way of cross examination, deft's offer of redirect with no ruling by the Court
5/ 3/72	Fltf's offer of deposition of Thomas Costello, deft's objection, pltf's response to objections & ruling by the Court.
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5/ 3/72	Deft's offer of deposition of H. C. Scudder, Pltf's offer by way of cross examination, deft's offer by way of direct examination, no ruling by the Court required
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5/ 3/72	Pltf's offer of depo of Jack O'Connor, Deft's objections, & Court rulings
5/ 8/72	Pltf's offer of deposition of Bernard Skud, Deft's objections, Deft's offer by way of cross examination, & pltf's responses to cross examination

Date	Proceedings
5/ 8/72	Pltf's offer of deposition of C. D. Swanson, Deft's offer by way of cross examination, & pltf's response to cross examination
5/ 8/72	Pltf's offer of deposition of Walter Kirkness and deft's objections to same
5/ 8/72	Pltf's offer of deposition of Theron Smith
5/ 8/72	Pltf's offer of deposition of John Gharrett, & Deft's Objections
5/ 8/72	Pltf's offer of deposition of Ronald C. Naab, Deft's objections to same
5/ 8/72	Pltf's offer of deposition of Holger Larsen, Deft's objections to same, Deft's offer by way of cross examination
5/22/72	Pltf's offer of deposition of Bernard Skud, deft's objections, Deft's offer by way of cross examination, Pltf's responses to cross examination, & Court's rulings
5/22/72	Pltf's offer of deposition of C. D. Swanson, Deft's offer of cross examination, Pltf's response to cross examination, no Court's ruling
5/22/72	Pltf's offer of deposition of Walter Kirkness, Deft's objections, & Court's ruling
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5/22/72	Pltf's offer of deposition of Ronald C. Naab, Deft's objections & ruling of Court
5/22/72	Pltf's offer of deposition of Holger Larsen, Deft's objections, Deft's offer by way of cross examination, Pltf's response to cross examination, & Court's rulings

Date	Proceedings
6/ 8/72	Pltf's post-trial brief
6/30/72	Deft's post-trial brief
7/26/72	Pltf's reply brief
12/14/72	Memorandum and order dismissing pltf U.S.A.'s complaint to quiet title to designated areas of lower Cook Inlet; judgment may be entered in favor of deft State of Alaska; that counsel for deft review proposed findings of fact & conclusions of law and judgment in the light of this memorandum & present appropriate findings, conclusions & judgment to the Court
1/29/73	Findings of fact and conclusions of law
1/29/73	Judgment that pltf's complaint is dismissed
2/ 8/73	Pltf's motion to clarify, amend and add to findings of fact and conclusions of law
3/28/73	Deft's response to pltf's motion to clarify, amend and add to findings of fact and conclusions of law
4/ 9/73	Order denying motion of pltf to clarify, amend and add to findings of fact and conclusions of law
5/ 1/73	Pltf's notice of appeal from the judgment entered 1/29/73 which became final 4/9/73
5/ 1/73	Pltf's motion for stay upon appeal
5/ 1/73	Pltf's memorandum in support of motion for stay upon appeal
5/ 1/73	Deft's response to pltf's motion for stay upon appeal
5/ 9/73	Order granting pltf's motion for stay upon appeal, and that stay affects only actions of pltf pertaining to the disposition of natural resources of the seabed and subsoil of Cook Inlet, and has no affect on the right of deft. to regulate fishing by U.S. Citizens & citizens of other nations within the area of lower Cook Inlet

Date	Proceedings
5/25/73	Stipulation and motion for amended stay
5/29/73	Amended stay order, that the motion of pltf for Stay upon appeal is granted
7/13/73	Stipulation concerning omissions from record on appeal
9/19/73	Appellant's Brief on Appeal filed
10/16/73	Joint motion for expedited hearing filed
11/ 6/73	Appellee's Brief on Appeal filed
11/21/73	Appellant's Reply Brief filed
12/ 4/73	Order granting motion for expedited hearing
1/ 9/74	Appellee's Supplemental Brief filed
3/19/74	Ct of Appeals Opinion
5/ 4/74	Judgment of Ct. of Appeals entered
5/ 8/74	Appellant's Application for Recall & Stay of Mandate filed
5/14/74	Order for recall and Stay of Mandate
6/ 7/74	Appellant's motion for extension of stay of Mandate
6/12/74	Order for extension of stay of mandate
6/17/74	Petition for Writ of Certiorari to U.S. Court of Appeals for the Ninth Circuit
7/18/74	Respondent's Brief in opposition to Petition for Certiorari.
12/ 9/74	Petition for a Writ of Certiorari granted

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Civil Action No. A-45-67

[Filed March 20, 1967]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA, DEFENDANT

COMPLAINT TO QUIET TITLE AND FOR INJUNCTIVE RELIEF

The United States of America, by and through the undersigned United States Attorney, acting at the direction of the Attorney General of the United States and at the request of the Department of the Interior, complains of the defendant above named, and for cause of action alleges:

I

The Court has jurisdiction over this action pursuant to Title 28, United States Code, section 1345.

II

At all times herein material, as against the State of Alaska the subsoil, seabed, and natural resources of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line marking the seaward limit of inland waters, have appertained and now appertain to the United States, and have been and now are subject to its exclusive jurisdiction, control, and power of disposition.

III

The line marking the seaward limit of the inland waters of Cook Inlet is a line from the easternmost

extremity of the mean lower low-water line on Harriet Point, at latitude 60° 23′ 39″ N., longitude 152° 12′ 52″ W., to the nearest point on the mean lower low-water line on Kalgin Island, at latitude 60° 21′ 50″ N., longitude 152° 04′ 45″ W., and a line from a point on the mean lower low-water line on Kalgin Island at latitude 60° 20′ 36″ N., longitude 152° 00′ 14″ W., to a point on the mean lower low-water line on the eastern shore of Cook Inlet at latitude 60° 04′ 15″ N., longitude 151° 38′ 45″ W.

IV

The State of Alaska claims some right, title, or interest in or to said subsoil, seabed, and natural resources adverse to the United States, and by public notice has invited competitive bids for an oil and gas lease of a portion of said subsoil and seabed, and has announced that said lease sale will be held on March 28, 1967.

V

By reason of the foregoing, the State of Alaska has cast a cloud on the rights and title of the United States and, unless restrained by this Court, will continue to do so and will create lease claims adverse to the United States and will interfere with the proper and orderly development of the mineral resources by the United States, for all of which the United States has no adequate remedy except by this action.

Wherefore, the United States prays for relief as follows:

1. That this Court issue a temporary restraining order, directing the defendant not to issue any mineral lease affecting or purporting to affect any of the submerged lands of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line described in paragraph III hereof;

2. That after hearing, this Court issue a preliminary injunction restraining the defendant from issuing any mineral lease affecting or purporting to affect any of the submerged lands of Cook Inlet, more than three

geographical miles seaward from the line of mean lower low water and from the line described by paragraph III hereof, pending entry of final judgment herein;

3. That this Court enter judgment declaring that as against the State of Alaska the subsoil, seabed and natural resources of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line described in paragraph III hereof, appertain to the United States and are subject to its exclusive jurisdiction, control, and power of disposition, and that the State of Alaska has no title thereto or interest therein, and permanently enjoining the defendant from interfering with said subsoil, seabed, and natural resources; and

4. For such other and further relief as the Court may deem proper.

/s/ Richard L. McVeigh
RICHARD L. MCVEIGH
United States Attorney

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Civil Action No. A-45-67

[Filed April 18, 1967]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

STATE OF ALASKA, DEFENDANT

DEFENDANT'S ORIGINAL ANSWER

Now comes the State of Alaska by and through its Attorney General and files this, its original answer to plaintiff United States of America's Complaint.

I.

Defendant admits the allegations in Paragraph I of plaintiff's Complaint.

II.

Defendant denies the allegations in Paragraph II of plaintiff's Complaint.

III.

Defendant denies the allegations contained in Paragraph III of plaintiff's Complaint.

IV.

Defendant admits the allegations contained in Paragraph IV of plaintiff's Complaint.

V.

Defendant denies the allegations contained in Paragraph V of plaintiff's Complaint.

FIRST DEFENSE

That the area in contention lies within what is known as the Cook Inlet. Cook Inlet is historic inland water with a line of closure extending from Cape Douglas to Point Bede, Alaska. That, being historic water, the Cook Inlet, its waters, subsoil, seabed, and natural resources are owned by the sovereign State of Alaska.

SECOND DEFENSE

The Complaint fails to state a cause of action against

WHEREFORE defendant State of Alaska prays as follows:

(1) That this Court enter judgment declaring that as against the United States of America the waters, subsoil, seabed and natural resources of Cook Inlet as described in the First Defense of this Answer are owned by the sovereign State of Alaska and that the United States of America has no title therein; and

(2) That the Complaint be dismissed and the plaintiff be granted no relief and costs be awarded to the defendant; and

(3) For such other and further relief as the Court may deem proper.

D. A. BURR
Attorney General

/s/ Ralph G. Crews
Ralph G. Crews
Assistant Attorney General

• • • •

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Civil No. A-45-67

[Filed January 6, 1972]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

STATE OF ALASKA, DEFENDANT

PRE-TRIAL ORDER

• • • •

II

Stipulations

The parties have agreed to certain facts. They are listed below. The agreement to these facts as uncontested is not a concession by either party that such facts are relevant.

1. The breadth of the territorial sea of the United States is three nautical miles except in the case of historic territorial sea bays.

2. The distance between Cape Douglas and either Point Bed, Cape Elizabeth, or Point Gore exceeds 40 nautical miles.

3. The only court actions brought by the State of Alaska as a result of law enforcement actions against Japanese fishing boats in April of 1962 for fishing in Shelikof Strait were:

a. *State of Alaska* v. *Mine Sutoshi*, No. 62-141 Cr.
b. *State of Alaska* v. *Mongo Hanasaki*, No. 62-142 Cr.
c. *State of Alaska* v. *Higashima Tadao*, No. 62-144 Cr. that were brought in the Superior Court of the State of Alaska.

4. All three of the cases referred to in paragraph 3 above were dismissed on motion.

5. During but not limited to the years through to the present, the United States had been a party to international treaties and conventions established for the purpose of regulation and conserving the fisheries on the high seas.

6. Japanese fishermen fish on the high seas off the Coast of Alaska in the general vicinity of Kodiak Island and the Kenai Peninsula.

7. Canadian fishermen fish on the high seas in the general vicinity of Kodiak Island and the Kenai Peninsula.

8. Russian fishermen fish on the high seas in the general vicinity of Kodiak Island and the Kenai Peninsula.

9. The memorandum dated April 28, 1953 contained in United States Exhibit No. 77 was written by Albert M. Day who, at the time, was Director of the United States Fish and Wildlife Service and responsible for the enforcement of the fisheries laws in Alaska. That memorandum was written to the Regional Director of the Fish and Wildlife Service in Juneau, Alaska.

10. The memorandum dated May 8, 1953, contained in United States Exhibit No. 77 was written by Dan H. Ralston, Law Enforcement Supervisor of the U.S. Fish and Wildlife Service in Juneau, Alaska, to the law enforcement agents in Alaska listed on the memorandum.

11. The documents identified in paragraphs 11 and 12 were transmitted to and received by the Anchorage Office of the Fish and Wildlife Service.

12. The sum of the line segments drawn on United States Exhibit No. 73 from a point north of Ninilchik to Kalgin Island and from Kalgin Island to Harriet Point equals 24 nautical miles.

13. The entrance to the following bays is generally the line drawn between points on the shores of those bays as shown on United States Exhibit No. 73:

a. Kachemak Bay
b. Oil Bay

c. Illiamna Bay
d. Urus Cove
e. Port Graham and English Bay
f. Koyuktolik Bay.

14. A nautical or geographical mile is equal to 6,076.11549 international feet approximately.

15. Except in the case of historic bays, the position of the United States as to the appropriate length of a baseline at the mouth of a bay from which the three mile limit is measured has been:

a. Before 1912, 6 miles
b. 1912-1962, 10 miles
c. After 1962, 24 miles.

16. Cook Inlet is a land-locked body of water.

17. Cook Inlet is clearly defined.

18. Cook Inlet is doubly flanked by territory of the United States.

19. Cook Inlet is well marked by prominent headlands.

20. Cook Inlet's tributaries and streams originate in and proceed only through Alaska.

21. Cook Inlet is not a watercourse between nations.

22. Cook Inlet has been mapped innumerable times since the Fifteenth Century.

23. American fishermen who have fished in Cook Inlet believed and continue to believe that foreign nationals are not permitted to fish in Cook Inlet; that they considered and continue to consider Cook Inlet is included within the territory of the United States; and that they considered and continue to consider Cook Inlet to be inland waters for the application of the Coast Guard inland rules of the road.

24. Tidelands are lands between mean low water and mean high water.

25. United States Exhibit No. 73 is on sale to the general public by the National Ocean Survey in Rockville, Maryland. These documents went on sale subsequent to the filing of this lawsuit.

26. The steamer ZAPORA referred to in the telegrams between O'Malley and Studdert, Alaska Exhibit No. B-E at pages 960 and 961 of the Appendix to the State of Alaska's Trial Brief, was an American vessel owned by the Booth Fisheries Company, Chicago, Illinois, at the time of the incident referred to in those telegrams.

27. The steamer NEW ENGLAND referred to in the telegrams between O'Malley and Studdert, Alaska Exhibit No. B-E at pages 960 to 961 of the Appendix to the State of Alaska's Trial Brief, was an American vessel owned by the American company, the New England Fish Company, at the time of the incident referred to in those telegrams.

28. The State of Alaska offered certain tracts for competitive oil and gas leasing prior to this litigation. Said tracts are within the disputed area of Cook Inlet.

29. Ships from Canada, Panama, Korea and Japan frequently enter Cook Inlet to pick up and discharge cargo at Cook Inlet ports.

30. The 1906 Act for protection and regulation of the fisheries of Alaska gave the Secretary of Commerce authority to regulate salmon fishing within 500 yards of the mouths of Alaskan streams and rivers.

31. Cook Inlet is not a river. However, a map dated 1867 published by the Coast and Geodetic Survey identifies Cook Inlet as a "Cook's River."

32. Exhibit A to this Draft Order is identical to United States Exhibit No. 73.

DATED at Anchorage, Alaska, this 6th day of January, 1972.

/s/ James A. von der Heydt
James A. von der Heydt
District Judge

Approved as to Form:

For the Plaintiff

Jon Charney

By /s/ Peter Y. Page
Attorney, Department of Justice
Washington, D.C.

For the Defendant

JOHN E. HAVELOCK
Attorney General

By /s/ Charles K. Cranston
Charles K. Cranston
Assistant Attorney General

RELEVANT PORTIONS OF
TRANSCRIPT OF TRIAL

PLAINTIFF'S WITNESSES

[152] CHARLES HOWARD BALTZO

being first duly sworn upon oath, testified as follows.

• • • •

DIRECT EXAMINATION

BY MR. CHARNEY:

• • • •

[159] Q What was the report as to the location of that vessel?

A The report was that it was definitely far over three miles. There was no question that it was a marginal case. It was much more than three miles from shore, and nitely up inside of Cook Inlet.
my recollection is that it was on the east side of Cook Inlet somewhere off the Kenai Peninsula. It was defi-

Q Okay, go on.

A And so the only question was, should we take action against this vessel that was fishing in U.S. waters, or should we not? And because we had been talking about the matter before, why, after discussing the particular circumstances in this case it was our consensus, and I decided that we should take no action against the Canadian vessel because it was a vessel of a foreign national, namely Canada, and that we did not feel that our jurisdiction extended beyond the so-called three-mile limit or more than three miles from shore, and this boat clearly was beyond that distance.

Q What was your position at that time?

A At that time I was acting regional director because the regional director, Rhode, was not in the office. That is why they came to my office with it first.

Q What happened after that?

[160] A One of these two men, I am not sure which, went into the radio room next to my office and got Agent Bronson on the radio again, let's see, we had two-way communications with all our aircraft, and told him to take no action against the halibut boat.

Q Do you know if any action was taken against the halibut boat?

A No, it was not.

• • • •

[172] CROSS EXAMINATION

BY MR. PHILLIPS:

Q Just to go back for just a moment, you served as the assistant [173] regional director of the Fish and Wildlife Service in Alaska from 1950 to 1958; is that correct, sir?

A I believe it was through 1959.

Q All right, sir, a period of about nine years, then?

THE COURT: You must answer aloud.

THE WITNESS: Yes.

BY MR. PHILLIPS:

Q During that time, Mr. Baltzo, you, in effect, were the number two man insofar as the Fish and Wildlife Service was concerned, in the whole of Alaska?

A Yes.

Q And I believe among your responsibilities, if I understood you correctly, was the responsibility for administering the fishery laws—fishing laws?

A Yes.

Q And I suppose as a man with that responsibility and with that position, you had some discretion and latitude, did you not?

A Yes.

Q As a matter of fact, you had what might be described as wide latitude and a high degree of autonomy with reference to what you referred to, at least on your deposition, as field program implementation decisions and enforcement; is that correct?

A Yes.

[174] Q Now, of course, having that responsibility, Mr. Baltzo, it was necessary that you know the fishing laws and the fishing regulations; is that correct, sir?

A Yes.

Q And as a matter of fact, you had to know them in some detail?

A Yes.

Q And you had to interpret them in order to know how to enforce them; is that correct, sir?

A To the best of my ability, I was supposed to do that, yes. They were very complex.

Q And of course, without asking you to be immodest, you had an expertise about these laws that an ordinary person like myself perhaps would not have; isn't that correct, sir?

A Yes.

Q Now, I noted in your testimony that you also have had some experience in enforcement work, first, as I recall, in the State of Washington where you had actual training, and subsequently experience here in Alaska; is that correct, sir?

A Yes.

Q Now, in doing enforcement work, is it occasionally necessary for an enforcement officer, say a U.S. enforcement officer, to board a fishing vessel?

A If a vessel is sighted or caught, or however you want to express it, in the act of violating a fishing regulation, it may be necessary to board it if it's necessary to gain [175] enough evidence for a conviction.

Q Yes, sir, and would you tell me generally, sir, how this boarding operation is carried out, just generally?

A Well, the patrol boat or airplane that makes the apprehension would draw within speaking distance of the vessel in violation or suspected violation, and to the extent possible there would be a dialogue between the two, the arresting officer and the suspected fisherman. And if the results of this dialogue were not sufficient to produce the evidence that the arresting officer needed, he would then ask permission to go aboard.

Q Yes, sir. And how is this actual boarding done? Does one vessel draw near or is tied to the other, or just how is that done, sir?

A That is right. Two vessels draw together. The arresting officer would normally step over onto the other one.

• • • •

[176] BY MR. PHILLIPS:

Q Just one or two more questions, and I don't make a great point about this, the boarding of another vessel is an act done by an agent who has credentials, does he not?

A Yes.

Q And he shows those credentials to the boat captain?

A If the boat captain asks to see them.

Q And normally, the enforcement officer is armed, is he not?

A No, he is not, not in our case. I don't know what may be the general case.

Q That is a pretty—that boarding operation is not done socially, is it, but is done in the course of the business of the enforcing agents?

A That is right.

Q And it is a pretty serious occasion, particularly when you are boarding a foreign vessel, is it not, sir?

A Yes.

• • • •

[177] BY MR. PHILLIPS:

Q May I restate my question, Mr. Baltzo, so it is this: Back in 1950 to 1959, when you were in your position, your prime interest in Alaskan fisheries was salmon fishing, was it not, sir?

A Yes, it was.

Q And as a matter of fact, if anyone had used the term "Alaskan fisheries" to you, you would have immediately thought of salmon fishing, would you not, sir?

A Well, it all depended on the context in which the reference was made.

Q Well, you thought of salmon as of far greater importance than other types of fish such as halibut and shrimp and trawl fish; isn't that correct, sir?

A That is correct.

Q And you realized, undoubtedly, the importance of the salmon fisheries of Cook Inlet to the people of America, the United States, and particularly the people of Alaska, did you not, sir?

A Yes.

Q And your prime job and your prime objective, then, in enforcing these fishing regulations was to conserve and manage the salmon fishing, was it not, sir?

[178] A That was our primary job, right, insofar as fisheries were concerned.

Q And as a matter of fact, sir, you realize that if these salmon fisheries here in Alaska were depleted that that would result in a great and irretrievable loss to the economy of this country and to the people of Alaska, isn't that so?

A Yes.

Q And of course, I would assume that as a government employee, your prime loyalty was to the people of the United States and the people of Canada, isn't that correct, sir?

A The people of the United States and who?

Q And the people of Alaska. They were people of the United States, were they not, Alaskans?

A Yes. I don't think we felt any particular loyalty to the citizens of Alaska as such, but as citizens of the United States, yes.

Q But, certainly, you weren't holding any greater loyalty to foreigners than you were to the people of Alaska, were you?

A Oh, of course not.

Q As I understand your testimony, up until the early 1950's you had known of no foreign fishing activity of any kind in Cook Inlet, had you?

A I can't recall that I did.

Q Yes, sir. And the only fishing by foreigners that you knew about was fishing for halibut, and that started in the early [179] 1950's, as I understand your testimony.

A No, it is probably in the early 1950's that I became aware that Canadians were fishing in Alaskan, or if you might say off the coast of Alaska, but I certainly wouldn't say that that is when the fishery started. It may have been going on. I believe it was going on for some time prior to that.

Q You didn't know of it, though, sir?

A I didn't know of it.

Q And that which you did know of, which occurred in the '50's, was a very rare thing, was it not, sir?

A Well, I couldn't say that we knew whether it was rare or not, that the incidents that we did know of were rather rare. This was not a time of intensive patrol. The salmon fisheries occurred at a much later date than the halibut fisheries.

Q Now, this incident that you spoke about, let me make quite sure that we all understand you. It was a Canadian boat incident, right?

A Yes.

Q It was fishing, as best you recall, outside three miles from shore—

A Yes.

Q —in Cook Inlet, and it was fishing for halibut—

A Yes.

Q —and not for salmon?

A Yes.

[180] Q Now, you have referred to your deposition. Mr. Charney, you remember, arranged it back in early 1971, March, as I recall.

A Yes, March 20, I believe.

Q And at that time, as you have done here today, Mr. Baltzo, you took an oath to tell the truth and the whole truth, did you not, sir?

A (Nodding.)

• • • •

Q Mr. Baltzo, you realized when you took that oath to tell the truth that that was a serious obligation on your part, did you not, sir?

A I certainly do.

Q And you realize that this was a serious matter insofar as the State of Alaska was concerned. Don't you

remember in the [181] course of the questioning, Mr. Cranston told you how important this case was to the State of Alaska?

A Yes.

Q And you knew that what you were saying there under oath was being written down, didn't you?

A Yes.

Q And you knew that later, we, as lawyers, and perhaps the Court, would be called upon to examine that testimony and rely upon it as being the truth?

A Yes.

Q And I believe that you have told Mr. Charney here that with the exception of a few dates and names of people that you didn't remember just where they had gone or when they had gone, that you had read your deposition and you had found that you had told the truth; is that correct, sir?

A Yes.

• • • •

[182] Q Mr. Baltzo, by way of leading up to what I am going to ask you, would you mind turning to page 41 on your deposition, and I refer you to line five on that deposition and ask you if you did not testify as follows, and I quote: "We, on our part, felt the need for conservation of the Alaska salmon fisheries was so great that we would have to lead in the direction of enforcing these regulations in order to protect the salmon runs. Unless we did, we'd have been powerless. I mean the fisheries would have been destroyed in short order by the fishing industry."

Did you not say that, sir?

A Yes, that is stated here.

Q And is that correct, sir?

A Well, let me see what the rest of this is here.

[183] MR. PHILLIPS: Just this statement here, is that a correct statement on your part, or do you want it qualified in any way?

THE WITNESS: No, that is exactly the way we felt, that was the situation.

BY MR. PHILLIPS:

Q That was true then, and it is true now, sir, as far as you are concerned?

A Well, I don't know about what the situation may be today. This has been 12 years since I have been—

Q I said so far as you are concerned, it is true?

A So far as I am concerned, it is, yes.

Q Now, don't you remember that thereafter, Mr. Cranston asked you some questions after Mr. Charney got through, and don't you recall that he asked you what the policy of your department would have been with regard to foreign vessels that you had found fishing for salmon in Cook Inlet in the waters more than three miles from the shoreline? Don't you remember questions of that type?

A Yes.

Q And don't you remember, sir—I will come back to them in a moment—don't you remember, sir, that you testified in substance that if you had found a Canadian boat or any other kind of foreign boat fishing in Cook Inlet more than three miles from the shore you would have done two things, sir? First, you would [184] have boarded the boat or had your enforcement officers do it, and you would have gotten immediately in touch with Washington by wire?

• • • •

Q Don't you remember testifying to that effect, Mr. Baltzo?

A I said if we had found the foreign fishing vessel fishing for salmon within the described waters of Cook Inlet, that we would have asked permission to board.

MR. CHARNEY: Wait a minute. More than three miles from Cook Inlet you'd have gotten immediately in touch with Washington, wouldn't you?

THE WITNESS: More than three miles from Cook Inlet.

BY MR. PHILLIPS:

Q More than three miles from the shore in Cook Inlet, you'd [185] have gotten immediately in touch with

Washington and you testified, did you not, that you would have even boarded the boat?

A I said we'd have asked permission to board.

Q All right, sir, you'd have asked permission to board it, and you'd have gotten in touch with Washington; isn't that true?

A Yes.

Q Now, Mr. Baltzo, so there is no misunderstanding between us at all, and I don't want to misquote you, let me turn to the deposition itself, or ask you to do so. I want you to look at page 57 and read your—I want to read to you your testimony beginning on line 21 of that page, and you read along with me to yourself as I read it out loud so to make sure I have read it correctly and not misquoted you, and I am now reading, "No, the fact that it was halibut would have given it somewhat lesser priority in our eyes than if it had been salmon. Our big concern in those days was the salmon fishery. When you said Alaska fisheries, well, I immediately assumed you meant salmon. Things like shrimp and halibut and trawl fish were of far less importance than they are today. Now, if a Canadian boat had been up there fishing salmon, I can't say just what we would have done, but it would have helped a little bit to have i' a more obscure fishery of less importance than if it had been the number one fishery [186] with which we were more concerned. If a Canadian had gone way up inside Cook Inlet to fish for salmon, then I am sure we would have to reach Washington."

Didn't you say that, sir?

A Yes.

Q Now, turn on over, and Mr. Cranston asked you some more questions about this. Now, turn on over to page 61, sir, and he was continuing to ask you about foreign boats fishing for salmon in Cook Inlet, and I want you—I want you to look again at line 21 on page 61. Do you find it there, sir?

A Line 21 on page 61, yes.

Q All right, and did you not say there, and I am quoting, "I would say, based on all of that, that we would not have taken any action against it, but we would

have gathered all of the information possible on the subject and referred it to Washington."

And then Mr. Cranston said, "I see," and you continued, and notice this language. "We would have identified it and may have even boarded it. In fact, I am sure we would have."

Didn't you say that, sir?

A I can say that I said that, but I believe you should read the next answer.

Q Yes, sir. I don't want to cut you off from reading anything. I will read the rest of it. "You would have boarded it," Mr. Cranston asked you. "I believe we would have, or at [187] least asked permission to board." That is what you said, was it not, sir?

A Yes.

Q And that is this type of enforcement activity that you described a moment ago when I asked you about how you enforced fishing regulations, isn't that true, sir?

A Yes.

Q Now, Mr. Baltzo, let me stop and ask you to think for a moment, if you will, sir. Now, you wouldn't have boarded that vessel or asked permission to board it just to do so to chit-chat with the boat captain, would you?

A Certainly not.

Q And let's talk about your getting in touch with Washington. You wouldn't have gotten in touch with Washington to ask Washington where the boat was, whether it was within three miles or outside of three miles, if you had your own enforcement agents already aboard the boat, would you?

A As I say, we would have gotten in touch with Washington. I didn't mean we'd do it that very moment. I mean we would have done it before the case could have been pursued further.

Q Yes, sir. I am asking you, and what would be the reason? You wouldn't be calling Washington, whatever you did, to ask Washington where that salmon boat was, would you, because you knew where it was?

A Right.

[188] Q And if it had been within three miles, you have already told this court you would have arrested the

boat captain and preferred charges against him, wouldn't you?

A Well, not exactly. What we would have done is gathered all the evidence we could, but would have turned the evidence over to the country having jurisdiction over this fishing boat.

Q And they would have prosecuted him?

A Helping them prosecute him.

Q Helping them every way you could prosecute him, wouldn't you?

A Yes.

Q Now, I want to talk to you, if you will permit me to do so, about these fishing regulations. I believe you told us on direct examination that your responsibility went so far as to from time to time include the responsibility for rewriting the regulations or recommending rewriting them; is that correct, sir?

A Yes.

Q Now, first, did I understand you to say, and it is my understanding that when you refer to territorial waters or waters over which the United States has jurisdiction, you mean by that waters within three miles of the coastline; is that correct, sir?

A No, in some—that is the case—I mean the truth in most cases, but in the case of our own American fishermen, we had [189] jurisdiction in the areas that were described in the fishing regulations, and these did not necessarily follow the three-mile limit.

Q That is what I am going to come to, Mr. Baltzo, in just a minute, but I want to first understand that generally you understand territorial waters or waters over which the U.S. had jurisdiction to mean waters within three miles of the coastline; is that right, sir? Or, if that is not what you understood, tell me what you did understand.

A No, I understood that our jurisdiction applied within the written description of the various fishing areas as they were contained in the fishing regulations and published in the Federal Register.

Q I am going to come to that, Mr. Baltzo, but let me get at it this way. Now, if our fishing—back up just a

minute. You say that you think we did have jurisdiction over Americans on the high seas, right?

A I thought we did.

Q Yes, sir, but that didn't mean just because you had jurisdiction over them that a fishing regulation applied to them. For example, you wouldn't go out 20 miles off the coast of Kodiak and arrest an American just because he was an American, would you?

A No, because we had no regulations or fishing areas that took in waters 20 miles off Kodiak.

[190] Q That's right, and so since you didn't have any regulations that pertained to fishing, say, 20 miles off Kodiak, you wouldn't have arrested that fisherman whether he be an American or a Japanese or whatever, would you?

A Not prior to 1956, we wouldn't have.

Q All right. Now, let's go—I want you to look—do you have Exhibit 75 still there before you?

A Yes, I do.

Q Mr. Baltzo—incidentally, that exhibit perhaps for the Court's benefit, I will describe, and see if it is correct that consists of some three memorandums that issued from the Alaska office and a couple of responses from Washington; is that not correct, sir?

A Well, I haven't counted them, but that sounds like it.

Q I am just getting this in general to get you and I thinking together and make it clear what you are talking about.

In the first dated memorandum there is one that is dated on March 31, 1952; isn't that correct, sir?

A Yes.

Q And that is to the Director, FWS. I assume that is Fish and Wildlife Service in Washington—

A Yes.

Q —from the regional director in Juneau, that is Mr. Rhode.

A Yes.

Q I notice while this memorandum consists of a whole page and [191] about a quarter of a page on the second page, and in order to get the sense of this and the con-

tinuity of it, you will notice that Mr. Rhode is writing to Washington, and he says here, "My question here relates only to United States fishermen on vessels registered under the United States flag." You see where I am reading?

A. Yes.

Q And this is what Mr.—obviously what Mr. Rhode is writing about. His question here relates only to United States fishermen on vessels registered under the United States flag, right?

A Yes.

Q "There is a possibility now of development of a plan by drift gill net boats to attempt to fish lower Cook Inlet without regard to our regulations for that area on the theory that the regulations do not apply beyond the three-mile limit." You see that, sir?

A Yes.

Q Now, you will notice, Mr. Rhode concludes, if you will turn over to the next page, he concludes this memorandum with what at least we, on behalf of the State, feel to be a rather significant statement, and I quote it to you. "While it may be a separate matter, I suggest terms of a proposed Japanese treaty be kept in mind while doing research on above to see what steps we might take to establish historic rights [192] in off-shore waters." Do you see that, sir?

A Yes.

Q "What steps we might take to establish historic waters." Now, I want you to turn to the answer that Mr. Rhode got. That is a memorandum back from Washington dated May 1, 1952, is it not, sir?

A Yes.

Q I want you to follow and hear me closely, Mr. Baltzo, again to get the continuity of this and to see how you people in the Fish and Wildlife Service were construing these regulations. Let me read the first two paragraphs.

"Reference is made to your memorandum of March 31, requesting information concerning the applicability of the Alaska fishery laws and regulations to waters beyond the three-mile limit. You suggest that in view of certain

court decisions, these laws and regulations might apply to our nationals wherever they are on the high seas and would not necessarily be restricted to territorial waters." Do you see that, sir?

A Yes.

Q Now, I want you to notice particularly, Mr. Baltzo, the next paragraph. "The Alaska fishery laws refer to 'waters of Alaska over which the United States has jurisdiction,' and the regulatory areas described and set apart by the regulations and to which the regulations apply are described in [193] every instance as including 'all territorial coastal and tributary waters of Alaska.'" You follow me there, sir?

A Yes.

Q Now, notice next what Mr. Seaton Thompson, this man from Washington, writes, "It is the opinion that these laws and regulations apply to fishing in the described areas only and do not apply to fishermen operating elsewhere, even though they may be American citizens on vessels registered under the American flag." You see that, sir?

A Yes.

Q Now, to go back just a moment and to get this clear, you have told us that you wouldn't arrest an American fishing 20 miles off the coast of Kodiak simply because the regulations didn't apply to that, right?

A Yes.

Q But, you would have arrested an American if he were fishing more than three miles off the coast of Alaska, three miles off the coastline of Cook Inlet, wouldn't you?

A We would, because that area was described as under our jurisdiction.

Q And you had arrested American citizens and had tried them and had prosecuted them for years for fishing in described areas in Cook Inlet even though they were fishing more than three miles from shore; isn't that so? As a matter of fact, you testified on your deposition you had never lost a case; isn't [194] that so?

A I don't remember making that positive a statement, but maybe you can find it.

Q Well, let me refresh your memory. Look at page 17 of your deposition. I refer you to line 17, and let me read it to you and you read along with me. "The Cook Inlet fishery is normally prosecuted heavily, well outside the three-mile limit from the standpoint of this beachline, although fishermen would sometimes contend that we had no authority out in the middle of Cook Inlet, but we always contended we did, and I don't believe we ever lost a case on that basis." Isn't that what you testified to?

A That is what I said, yes, which I don't think is what you first asserted that I said.

Q I am sorry. At least now we are straight. I have quoted you exactly.

A Yes.

Q Now, you are aware of the fact, are you not, that the regulations describing Cook Inlet are materially different from the regulations that described other areas of Alaska. You do remember that, sir, do you not?

* * * *

[195] Q Mr. Baltzo, you have in your hands, do you not, a pamphlet that includes the laws and regulations for the protection of commercial fisheries of Alaska?

A. Yes.

Q Now, I have—by a yellow slip there I have marked the regulations for the year 1956. Did you find it there, sir?

MR. PHILLIPS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MR. PHILLIPS:

Q Let me help you a moment. Yes. You have got them. I might [196] say to you, Mr. Baltzo, the reason I have selected the 1956 regulations is because those, I understand, are exhibits here, and also because I happen to have a copy of them so that I can read along with you.

MR. CHARNEY: Your Honor, I noted that we may be able to refer to this in the future, could we have this book marked for identification?

* * * *

[197] THE COURT: IU? It may be marked IU for identification. It may be marked. You may proceed, Mr. Phillips.

MR. PHILLIPS: Thank you, your Honor.

BY MR. PHILLIPS:

Q Let me ask you, Mr. Baltzo, to pick out some of these definitions of other areas. Before we get to Cook Inlet, let's look at page 33 of the 1956 fishing regulations. Do you find there now the 33 I am referring to? Do you have that, sir, page 33?

A Yes.

Q There you find the definition of the Bristol Bay area, do you not, sir?

A Yes.

Q And it reads, definition, "The Bristol Bay is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point off the coast three statute miles south of Cape Menshikof. Do you see that, sir?

A Yes.

Q And you note the inclusion of the word "territorial" there, do you not, sir?

A Yes.

Q Now, turn to page 36. There you find, do you not, the definition of the Alaska Peninsula area; is that correct, sir?

A Yes.

[198] Q And the definition there is, and I quote, "The Alaska Peninsula area is hereby defined to include all territorial, coastal and tributary waters from a point three statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point to the entrance to"—you are going to have to help me there, sir—

A Kayakliut.

Q —including all adjacent islands." There, again, you will note the inclusion of that word "territorial waters," do you not, sir?

A Yes.

Q And look at page 39. There you have the definition of the Aleutian Islands area, do you not?

A Yes.

Q Read that definition, please, sir.

A "The Aleutian Islands area is hereby defined to all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass."

Q Now, all of these regulations, as you in answers you have testified were authorized by what you called the White Act?

A Yes.

Q And if you will turn to the first page up toward the front, you will find a section, "General authority for the regulations," do you not?

A Yes.

[199] Q And there you have the law set out that is the White Act, is it not, sir? Well, whether it is the White Act or not, whatever it is, notice what that law says that authorizes these regulations. "For the purpose of protecting and conserving the fisheries of the United States and all waters of Alaska, the Secretary of the Interior from time to time may set apart and reserve fishery areas," now, notice this next language, Mr. Baltzo, "in any of the waters of Alaska over which the United States has jurisdiction." Is that correct, sir?

A Yes.

Q Now, you would agree with me as a man who was engaged in enforcing these regulations, that whatever regulations that have described these districts would describe those waters in whatever the district was as waters over which the United States had jurisdiction, would you not, sir?

* * * *

THE WITNESS: Well, I guess I can't very well answer the [200] question because it's over my head, this White Act.

BY MR. PHILLIPS:

Q All right, sir, I don't want to get you over your head. It is a legal question. We have got enough lawyers here, Mr. Baltzo, and I don't want you to be a lawyer, so I withdraw the question, but now I want you to turn

and look at the definition of Cook Inlet, and that is found, as I recall, on page 45. That definition, does it not, reads as follows: "The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area." Now, you notice, do you not, as you understood even back in the 1950's, that Cook Inlet was described differently from these others areas, and the difference is, Mr. Baltzo, that there is no reference in this definition to limiting it to territorial waters.

A Yes.

Q Right?

A Yes.

Q Now, let me ask you to do this, sir, and I don't want to embarrass you. Let me hand you, if I may, or ask the Clerk to do so, a blank sheet of paper and a pencil. Now, if you were going to engage in what you told me was your responsibility to redefine or recommend redefining or recommend changes in the regulations, can you write me a regulation [201] that included more water within the jurisdiction of the United States than the definition right before you, of Cook Inlet?

A Well, I am not sure.

* * * *

[202] Q Can you give me a broader definition of Cook Inlet than the one contained in those 1956 regulations?

A Just sitting here, I can't.

* * * *

[203] Q We were starting, as I recall, Mr. Baltzo, before the recess, with—I call your attention to an instrument which is contained in Exhibit 75. You have that before you, sir?

A Yes.

Q That is a memorandum dated December 16, 1952, is it not, sir?

A The memorandum dated December 16, 1952. Did I say '62, '52?

* * * *

Q I thought you were still looking for it.
A I have it now.
Q You will recall that on deposition, Mr. Cranston asked you about that memorandum, do you not?
A Yes.
Q And you recall, do you not, that while it purports to be written by Mr. Clarence J. Rhode to the director in Washington, [204] you recall that you testified that you believed that you were actually the author of that memorandum?
A Yes, that is what my deposition said.
Q Well, is it true?
A On reading it over subsequent to that time, I believe we collaborated on it because there is, oh, points here that probably Mr. Rhode put in.
Q My point is whether you wrote it, or whether you collaborated in it?
A Collaborated would be a better word.
Q You were there when it was written; is that correct?
A Yes.
Q And I call your attention to this language in that memorandum that you and Mr. Rhode were writing to Washington. I refer to the second paragraph, or third paragraph, where after mentioning Cook Inlet you go ahead and say, "We must control drift gill net salmon operation—salmon operations or lose control completely." You said that, did you not, sir? Third paragraph.
A In the memo of December 16?
Q Yes, sir, right down in the third paragraph. It is the fourth line in the third paragraph, "We must govern drift gill net salmon operations or lose control completely."
A Yes, I read that now.
Q And that was an expression of your policy and Mr. Rhode's [205] policy back there in 1952, was it not, sir?
A Yes, that is correct as stated.
Q And this, again—excuse me, I don't mean to cut you off. Did you want to say something else?

A I say, that statement, that clause, is true. That is the way we felt.
Q Yes, sir. So, coming back now, I am trying and looking back and I know this is a long time ago, Mr. Baltzo, to the reason why you would have boarded or asked permission to board that salmon boat and gotten in touch with Washington. The reason was your policy was that you had to govern drift gill net salmon operations or lose control completely. That was the reason that you would have gotten in touch with Washington, was it not, sir?
A You mean in case we had apprehended a fishing—
Q Fleet.
A —a foreign fishing vessel fishing for salmon?
Q Yes, sir.
A In the waters of Cook Inlet, yes.
Q That would have been the reason?
A And the reason would have been that.
Q Now, I want you to look down to the last paragraph of that memorandum that you and Mr. Rhode collaborated on. I want to read the first sentence to you. "I would like to see some official declarations made on a number of areas, including [206] Bristol Bay and so state in our regulations the jurisdiction as claimed. Canada and other countries have taken a stronger stand." You see that?
A Yes.
Q Now, the reason a moment ago that I was asking you if you could write a broader definition for Cook Inlet was because you were talking about official declarations about Bristol Bay in particular, but the definition in Cook Inlet, by reason of leaving out territorial waters and including all the water between Point Douglas and Gore, was because that was as broad a definition as you could give to Cook Inlet, was it not, sir? That is the reason I was asking you that question a moment ago, because you were advocating stronger declarations about Bristol Bay. You understand why I was asking you to write us another definition to include more waters if you could? You understand that now, sir?

A I believe it was just your way of making a point that that was written as broadly as it could be.

Q Well, I don't know whether it is a good point, but let's go on now. Grandfather rights may be at stake, you said. Now, what do you mean by grandfather rights?

A Well, grandfather rights are those rights that are claimed by virtue of prior practice or occupancy. That is in lieu of any regulation or provision to the contrary. A certain practice may have sprung up and then years later an attempt [207] is made to stop or prohibit this practice, why, the claim is made that they have grandfather rights.

Q That is exactly the way I look at it. That would be a way to establish as what you have heard referred to here as historic bays, isn't it?

A Historical presence or whatever.

Q I want you to come back and I want you to look now to that memorandum that Mr. Charney read out loud. Now, that is in Exhibit 77. That one of April, 1953. I want you to look at what that memorandum says, or the extract there says in the last sentence. Are you with me, Mr. Baltzo? I am looking at April 28, 1953.

A Yes.

Q One of the means by which a historic bay status may be established is to claim jurisdiction at least over the citizens of this country to such waters. That is what it says?

A Yes.

Q And that is exactly what you had been doing, both before and after you got this letter? That is, claim the jurisdiction over the nationals of this country, the United States?

A That is what we had been claiming for fishery regulation purposes.

Q With your wishing to establish some grandfather rights, isn't that true?

A We said one of the means by which a historic bay status may [208] be established is to claim jurisdiction.

Q Yes, sir, and that would be this historical business that gives rise to grandfather rights, that in turn give rise to historic bays. It is just that simple.

A Of course, this is signed by the director to us. This is his statement, not ours.

Q Now, you say you were greatly—you received this memorandum here with great relief, that was your words this morning; is that correct?

A Yes.

Q Now, you weren't greatly relieved to learn, I wouldn't think, that you'd let foreigners fish in these waters when if the American citizen fished there you would haul him in and arrest him? That didn't give you a great deal of relief, did it?

A Our relief was because we finally had a statement on the part of the national director as to what we should do, and also it confirmed the policy we had been following up to that time.

Q Yes, sir.

A It didn't pull the rug out from under us.

Q You didn't find any relief, let me put it to you this way, or maybe you did, in a policy that required you to arrest American citizens at the same place where you would let foreigners deplete the salmon fisheries of Cook Inlet. You wouldn't have found any satisfaction in that, would you?

[209] A Well, that is a hypothetical case. It never occurred. That wasn't the reason we felt any relief, and I don't believe we gave much thought to that part.

Q The relief you got—you advocating that some official declarations be made and that grandfather rights were at stake, the way you would have been relieved, it seems to me, and if I am wrong, you tell me, was to have taken these steps so on American nationals so as to require a historic bay status for Cook Inlet. That would have been to your liking, would it not, sir?

A I am not sure I understood your question, really. I'm sorry.

Q I am not sure I understood what you meant this morning when you said you received this memorandum

from Mr. Day with a great deal of relief. You say it clarified policy?

A Uh-huh.

Q And I understood that you were relieved to have it clarified, but you shouldn't—you couldn't have been relieved to know that hereinafter you are going to have to arrest Americans and let foreigners go free, could you?

A We had no problem at that time with foreigners threatening salmon fisheries. That is why we wouldn't have felt anything in regard to it.

Q All right, and this is my point. The only people you could enforce the fishing regulations on on salmon were American citizens, because they were the only people fishing in Cook [210] Inlet; isn't that true?

A For salmon, yes.

* * * *

BY MR. PHILLIPS:

Q Mr. Baltzo, turning to page 63 and 64 of your deposition—

A You say 64?

Q Sixty-three, sir.

A Sixty three.

Q Look at line 12. Let me read it to you to get it in context. "What type of data, memorandum, consultation or otherwise did you conclude that a six-mile limit applied at the time you were in office rather than, say, for instance, a 10-mile limit for closing bays?" Read out your answer.

A "Because—well, because the three-mile limit applied, and doubling it comes to six instead of 10."

* * * *

[211] Q The question was, "Were you ever made aware of, or did you ever consider the possibility that perhaps a 10-mile limit might apply in certain bays, also?" Read your answer.

A "I can't recall there was any such concept considered, no."

Q All right, now, go ahead and read it all. In other words, the question was, "In other words, no one in your office, or no one with whom you conferred in the Juneau office, was aware of the possibility that there might have existed a 10-mile limit for closing base in the 1950's in the United States?" Read your answer, sir.

A "I sure don't remember anything like that."

Q Now, turn to Exhibit 75 again, sir. Look at the March 31, 1952, memorandum. Now, in your deposition —before we get to that, exactly, turn to page 37 of your deposition.

[212] A I have it.

Q It's 36, the page just before that.

A Page 36?

Q Yes. Look at the last question.

* * * *

Q The last line, 20, you see it, Mr. Baltzo?

A Yes.

Q All right, getting to the one of March 31, 1952, that is referring to this memorandum of March 31, 1952, is it not?

A Yes.

Q "Did Mr. Rhode discuss this memorandum with you at all? Were you made aware of any of the contents of this memorandum?" And your answer was, "Well, yes, I was aware of the overall situation and I am sure that in one way or another I participated in it, but I didn't write this." That is indicating, so the deposition says.

A Yes.

Q You were indicating to the March 31—

A Yes, I said I did not write this.

Q Now, look at that March 31 memorandum a little more closely, this very memorandum that you say you participated in. Doesn't it refer to a 10-mile limitation? What I refer to, Mr. Baltzo, [213] is the third paragraph of that March 31 memo, the third sentence, "The maximum," or fifth sentence, "The maximum distance, shore to shore, for inclusion of bays," well let's go back—

as you are aware, the inlet is several times 10 miles wide, the maximum distance shore to shore, inclusion of bays, as territorial waters?

A Yes.

Q Now, how could you tell us on deposition, or why would you tell us on deposition, that you had never heard of a 10-mile line when you participated, so you say, in writing a memorandum that referred to the 10-mile line?

A Because at the time of the deposition I couldn't recall what the 10—what 10—what concept this 10-mile thing was.

• • • •

[214] Q I want to refer you again to this memorandum of December 16 where, you will recall, that you were in favor, you and Mr. Rhode, who collaborated with you, in favor of some rather strong declarations of policy.

A Yes.

Q You pointed out there that Canada had taken some strong positions, right?

A That was pointed out in here, and probably was based somewhat or based entirely on Mr. Rhode's knowledge. I am not sure at [215] all what he meant by that.

Q Now, if you were going to make strong representations, there would be a number of ways to do it, would there not?

A Oh, I suppose.

Q Well, let us suppose that Canada had asked the United States to tell them where they drew the line that separated the high seas from the internal waters of the United States. If you wanted to make a strong representation, one way to do it would be to respond to that request by Canada, would it not?

A Yes.

Q Now, and one way to show the exclusivity of United States waters would be to send a line—send a map showing a line; is that not correct, sir?

• • • •

[216] Q Now, did you know that after you left, or about the latter part of your stay, that the Canadian

Government asked our government for a chart showing a line that we would draw?

MR. CHARNEY: Objection; hearsay.

THE COURT: I believe you covered this on direct, counsel.

MR. CHARNEY: The Clay-Scudder Line, your Honor.

THE COURT: The Gharett-Scudder Line.

MR. CHARNEY: I beg your pardon, the Gharett-Scudder Line.

THE COURT: I believe the witness testified earlier in regard to the Gharett-Scudder line.

MR. CHARNEY: Not to what the counsel for the Defendant is asking.

MR. PHILLIPS: Let me rephrase the question.

THE COURT: I will consider the question withdrawn.

[217] BY MR. PHILLIPS:

Q Don't you know that the Gharett-Scudder Line was drawn on a chart and that that chart was furnished to the Canadian Government in respond to a request made by the Canadian Government?

• • • •

THE WITNESS: I know today based on something I have read that Canada was given a set, but at the time of the deposition, and at the time I worked in Juneau, I did not know. I had no way of knowing why the Gharett-Scudder Line was requested or what its purpose was.

MR. PHILLIPS: I see.

THE COURT: All right, the answer may stand.

MR. PHILLIPS: I believe that is all, your Honor. Thank you.

THE COURT: Redirect examination?

[218] REDIRECT EXAMINATION

BY MR. CHARNEY:

Q Mr. Baltzo, do you know whether or not your enforcement agents, or you, acting as an enforcement agent,

ever went on board private vessels not for the purpose of law enforcement?

A Oh, yes.

* * * *

Q Did you ever act as an enforcement agent in the field?

A Well, yes, I have acted as an enforcement agent quite a few times.

Q Did you ever go on board private vessels while you were with such an agent?

[219] A Oh, yes, frequently.

* * * *

[236] TAKAMI ICHIMURA

being first duly sworn upon oath, testified as follows:

* * * *

[238] DIRECT EXAMINATION

BY MR. BRADLEY:

* * * *

[239] Q Mr. Ichimura, will you please describe your past education?

A In 1955, graduated from the Tokyo University, area of specialty, fisheries. Immediately enrolled myself in school of the same university pursuing the same subject matter. In two years, conferred master's degree on fisheries. Immediately afterward, enrolled myself doctorate program. Spent three years, completed all the requirements and presently preparing a thesis for presentation.

Q Would you please describe your past employment?

* * * *

THE WITNESS: In 1959 as a temporary research employee of the Foreign Office of the Japanese Government, served International North Pacific Fisheries Commission, research committee, biological studies of cultures. In 1960, assumed a position of the director of the research institute, Japanese Research Institute of Shrimp Cultures. In September of the same year, the said research institute was reorganized into a profit-making corporation of which I became the director. Terminated this employment in February 1962. Became employed by the Eastern Pacific Fisheries Company, [240] Limited, in March 1962, the same year. From March on, began participating in the experimental test operations of the Kodiak herring. During the summer of 1963, engaged in the processing of herring roe and salmon in Alaska, working under contract for Western Alaska Enterprises, but remained in the employ of the Eastern Pacific Fisheries.

In 1964, transferred to the culture department within the Eastern Pacific Fisheries. In 1968, this culture department activity became independent of the Eastern Pacific and the new corporation thus formed became to be named South Sea Fisheries Company, Limited, of which I became the director.

In 1969, the South Sea Fisheries Company, Limited, absorbed another corporation called Japan Shrimp Cultures, which was my first independent organization, and thus new corporation after absorption came to be called Shrimp and Yellow Fin Cultures Company, Limited, of which I became the director, and this employment remains until the present day.

BY MR. BRADLEY:

Q. Mr. Ichimura, you testified that in 1962 you participated in an experimental herring fishery off Kodiak Island. At that time, did you come to Kodiak?

A Yes, I did.

Q How did you come to Kodiak?

A I came on board the Banshu Maru 31, which was a mother boat, [241] and there was a fleet of other vessels surrounding this mother boat. As the fleet came to Kodiak, I came to the waters near Kodiak.

Q Would you describe the purpose of the trip to Kodiak?

A The purpose was to come to the waters near Kodiak Island and catch the herring; should I say spawn herrings, and process kosnoko which is herring roe cavear.

Q How many vessels came with the Banshu Maru 31?

A In addition to the mother boat Banshu Maru 31, we had five other boats.

Q Who employed these vessels?

A Eastern Pacific Fisheries Company.

Q What was the headquarters location of the Eastern Pacific Fisheries Company?

A Inside building located at 1-1 Marunouchi Chiyodku, Tokyo, Japan.

Q Would you please describe the composition of the fleet that accompanied the Banshu Maru 31?

A There were two sets of herring fishing boats consisting of one purse sein boat and one tender. Therefore, there were two purse seiners and two tenders. Assigned to these was another boat which you might call a bonfire boat, therefore comprising together five boats in addition to the mother boat.

Q Mr. Ichimura, will you please describe the functions of the vessels you have described?

[242] A The processing, of course, of the boat which engaged in direct fishing as soon as fish schools are found. Therefore, they will make certain that the condition of the bottom of the sea are not interfering with the fishing boat, and also checking on weather conditions. They will set the net and catch the herring. The tender boats assist the catcher boats or the purse seiners in arranging the net to catch the fish, and after capture, tender boats perform the function of transporting the catch from the purse seiners to the mother-boat for processing. The bonfire boat has that particular function of making fire on board for the purpose of luring the herring schools if the concentration of fish are not enough to justify fishing efforts, particularly in the dark hours of the night. The bonfire boat plays the role of collecting and keeping the fish school where they can be caught.

Q Mr. Ichimura, how large is the Banshu Maru 31?

A Approximately 1770 tons.

Q How large is the crew?

A Approximately 125.

Q How large were the purse sein boats?

A One was 180 tons. The other was 150.

Q How large were the crews of these vessels?

A Twenty-five for the larger one, and 22 for the smaller one.

Q Mr. Ichimura, do you remember the sizes of the tender vessels?

[243] A One was 100 ton capacity. The other was 70.

Q Do you remember the size of the bonfire boat?

A About 30 tons.

Q Would you describe the methods employed by these vessels to catch fish?

A First of all, five boats other than the mother boat were equipped with a fish school detection equipment by the use of which they will continue from the time they arrive on the fishing ground, continue searching for fish schools. In our operation, to find the fish schools comes first. And then, once you detect a school of herring, since the method of catching fish is purse seine, it becomes important that you ascertain the bottom conditions are right and also weather conditions are favorable. Concerning these points, the two purse seiners and two tenders encircle the fishing—fish school. Thus, purse seiners circle the school with the purse seine nets, you naturally tighten the purse and bring the fish out into the hold, and tender boats from that point carry the catch back to the motherboat. Such was the method of operation.

Q Mr. Ichimura, can you tell me what a fish group is?

A It means the school of herring fish.

Q Is there any distinction between fish group and fish school?

A You see, the way English words are used, in Japan if you say "fish school," it sounds as if they're enrolled in elementary [244] school, so they use the word "group" instead of school in Japan.

Q What kind of detection gear was used by these vessels when they were searching for fish groups?

A The equipment was based on the principle of sonar detection.

Q Was this equipment used while these vessels were in transit?

A Yes. Of course, they were not used until the fleet arrived in the fishing ground area near Kodiak Island, but from that point on at all times during navigation all of the five boats were using the detection equipment.

Q According to the fishing methods that you have just described, was it necessary while in the course of these operations to utilize the entire fleet?

A Yes, they were necessary.

Q Normally, would the purse seine boats set their nets before they detected schools of fish?

A Not under normal conditions.

Q Under what conditions would they set their nets before—excuse me—before they detected a fish group?

A Well, around Kodiak Island, in Shelikof Strait when we arrived—shortly after arrival, we were not finding any herring schools, but dropped the nets in the water a couple of times for one to check the mechanism of the purse seine, and also practice methods of handling the net.

Q What officer was responsible for the navigation of the [245] Banshu Maru from Japan to the Kodiak group?

A Captain Mongo Hanasaki was responsible.

Q Did the captain make all the navigational decisions during the voyage to the fishing grounds?

A Of course he did.

Q Did his responsibility for navigational decisions change at any time?

A Yes, it did.

Q On this trip? When did it change?

A From after the fleet's arrival on the fishing ground.

Q How did it change?

A First of all, the purpose of the sending of the fleet is—the primary purpose is to implement the herring operation plan and therefore after arrival on the fishing

ground, not only the movement of the vessels, but also the planning thereof, and also those other matters directly relating to the movement of the vessels comes under the supervision of a group of five individuals who are charged with the responsibility of conducting the operations plan. Of course, even if the group takes over the operating responsibilities and movements related to it, the captain of the vessel continued to exercise—maintained or exercised authority in two areas. One. the safety of navigation, the other—

Q What is the operations group?

A Policy work. These are five individuals sent by the company [246] to execute the project.

Q Who were the members of that group?

A The group was headed by Mr. Yamaki, and fishing efforts were supervised by Mr. Kominato, processes by Mr. Toyoda, and general affairs by Mr. Kominato, and I, myself, took the responsibility of planning.

Q Can you describe in some more detail the functions of this operation?

A First of all, the manager of the group is in charge of the overall supervision of the function of these men. And then Mr. Kominato, who is in charge of fishing efforts, he will determine such matters as the density of a given school of fish, the size of it, and also a suggested method of catching the fish. He being the expert on these subjects, he naturally makes studies and recommendations to the group which will be discussed and reviewed within the group for final decision by the manager.

Mr. Toyoda, in charge of processing, of course, is in charge of the production, all phases of production, and his primary responsibility is to see to it that the quality of the product is the best attainable.

Mr. Kominato, in charge of general affairs, his role is to take care of the payroll of the crew and keep elementry check on the various provisions and other general affairs of the conduct of the internal affairs on board the boats.

[247] If you remember, myself in charge of planning, my responsibility was to detect a migration route of

moving herring schools, and after catching the fish determine biologically how mature the fish might be. All these problems, of course, discussed back and forth amongst members of the group, and after providing the best available biological knowledge to this group, I might also present recommendations as to how the boat should be moved from point to point in order to follow the migrating fish schools.

Q Did Mr. Ichimura want to say something?

A That is all.

Q Once the fleet had arrived in an area, did it restrict its fishing to the area in which it had originally arrived at?

A No, it did not.

Q On what basis was the decision to change areas made?

A After going around the island of Kodiak once in which time no fish schools were found, we came to the conclusion that the main herring schools were still migrating from outside into the spawning ground, and realized the necessity of continuing our cruise around the island in order to study the pattern of migration.

Q Did your job, Mr. Ichimura, your function on the Banshu Maru, require you to be familiar with the log of the Banshu Maru?

A Yes.

Q Why did you need to be familiar with that log?

[248] A You see, first of all, we have to look for the fish, the schools of fish. In our efforts to detect the fish schools, it naturally follows that we have to keep ourselves abreast on the movement of the vessel itself and methods and direction of future movements. These are quite important as a basis of the discussion for the group in order to make critical operating decisions. And in order to determine the present and future points of the location of the vessels, we frequently consulted the log. And of course, we were also obliged to check the log from time to time to make sure that none of the boats came close to violating the three-mile limit at all during the operating period.

Q Where on the vessel is this log kept?

A In the chart room on the bridge of the motherboat.

Q Did you have access to that room?

A Of course, I did.

Q What reasons would you go into that room for?

A The primary reason is the fact that the conferences of this operations group was frequently held in this chart room.

Q How often would these conferences be held?

A Well, sometimes there might be as many as three to four meetings a day. Other days, there might only be one meeting.

Q How often would you check the log of the Banshu?

A You see, whenever there is a change of course, this is preceded by a conference amongst the members of the operations group [249] for good rasons that you understand, and therefore, at such times we all check the log to make sure that we are doing it correctly.

Q So, you saw it at least every time the boat changed direction?

A Yes, most of the time.

Q Why did the Banshu Maru keep the log?

A First of all, it is required by the law of navigation of Japan that the captain keeps the vessel—keeps the log. It is a legal requirement. And secondly, the employer organization requires a certain record keeping during the navigation period, and for these two reasons, the log was kept aboard the motherboat.

Q What were the legal requirements imposed by Japan on the vessels to keep a log?

A As to the particular specifics of the requirement, I don't have knowledge.

Q What was the nature of the entries that were made in the log?

A The information contained in the log consists of the following, such as position of the vessel at noon, 1200 hours, the various conditions of the weather, time of the change of the position, whether or not the catchers are detecting the fish schools, the consumption and entries of oil, water and other supplies.

Q Were these entries made in the log of the Banshu Maru during [250] the Kodiak operation?

A Yes, they were.

Q Who were these entries made by?

A They were entered by the chief officers of the vessel.

Q Generally, can you describe at what intervals they were made?

A It is impossible to say how often, because it depends on the conditions and the nature, such as type of weather, and also change of the course of the vessel which might occur very often one day and not at all another day.

Q What language was the log of the Banshu Maru kept?

A English language.

Q Mr. Ichimura, can you speak English?

A Only a little.

Q Can you understand spoken English?

A If you don't complicate what you are saying.

Q Can you read English?

A Yes.

Q Can you write English?

A Simple sentences, yes.

MR. BRADLEY: At this time, your Honor, I would ask the Clerk to hand to Mr. Ichimura Plaintiff's Exhibit Number 104.

BY MR. BRADLEY:

Q Mr. Ichimura, will you please review that document? Do you recognize that document?

[251] A Yes, I do.

Q Would you tell the Court what it is?

A It is a copy of the log book of the Banshu Maru 31 of that time period the operation—herring operation continued at that time.

MR. BRADLEY: Your Honor, at this time, the Plaintiff would like to re-offer Plaintiff's Exhibit Number 104 as the authentic copy of the Banshu Maru.

THE COURT: Is there any objection?

MR. CRANSTON: There is no objection, your Honor.

THE COURT: It may then be marked and received into evidence as 104.

(Plaintiff's Exhibit No. 104 received in evidence.)

BY MR. BRADLEY:

Q Mr. Ichimura, during what period of time does this log cover? What period of time does it cover?

A From the time the fleet left the Japanese port in the latter half of March 1962 through the month of June until the time of our arrival back in Japan.

Q Mr. Ichimura, what was the operational plan of the vessel Banshu Maru and the fleet when it reached the Kodiak fishing ground?

A First of all, we had had previous biological knowledge that there was a principle spawning ground in the Shelikof Strait, [252] particularly in the waters adjacent to Uyak and Uganik. Therefore, our preliminary plan called for placing the center of our operation in that vicinity. However, we had no biological knowledge whatsoever of the general pattern of migration of the schools. Therefore, we also had in mind a plan to move around the island of Kodiak in order to determine scientifically the condition of migration of different schools of herring, and at the same time, in so doing discover mature spawning herring schools, capture them and process them. Such was the purpose of the plan at the time of arrival.

Q Did you search for fish in the area you originally arrived?

A Of course, we did.

Q Did you find fish.

A No, we could not.

Q What did you do?

A Well, we went around the island and moving northward we passed waters south of the Barren Islands and came back to the Shelikof Strait approximately where we had started, and I remember in the beginning

of the month of April, finally we for the first time found a school of herring. It was near Uyak.

Q After leaving Shelikof Strait the first time and passing south of Kodiak Island, did you fish on the Pacific side of Kodiak Island?

[253] A Yes, we looked for fish.

Q Did you find fish?

A No.

Q Did you set your nets there?

A No, we did not.

Q Continuing on the route you described, did you fish north of Kodiak Island?

A We looked for fish, but did not find them; therefore, did not use the fishing gear.

Q You testified that you finally found fish when you reached the Shelikof Strait area; is that correct?

A Yes, we did find—we did find them and we caught them.

Q What did you do with these fish?

A Well, we conducted a series of biological tests starting from the measurement of the body of the fish, and particularly as it was important for the purpose of the operations, the rate of sex maturity, having to do with the maturity of the eggs, but most of the fifteen ton of fish were found in the stage of prematurity. They were immature and therefore, as a result of these tests, we arrived at the conclusion that the season was as yet too early and the main part of immigration was still to come.

Q What did you do as a result of these findings?

THE INTERPRETER: Excuse me. Since you spoke, I missed him. I had asked him to repeat.

[254] BY MR. BRADLEY:

Q What did you do as a result of these findings, Mr. Ichimura?

A As I said, we came to the conclusion that the main body of the mature incoming schools are not yet around, and therefore from that conclusion we came to the decision of going once again around the island of Kodiak in search of them?

Q Did you search for fish on this route?

THE INTERPRETER: Which—on this route, you mean the second route?

MR. BRADLEY: The second route.

THE WITNESS: Of course, as I said, we were searching whenever in navigation.

BY MR. BRADLEY:

Q Did you find fish?

A No.

Q Then what did you do?

A Well, we only made one further trip which was unsuccessful. This time in going around the island again we decided to go north of Barren Islands because the last time when we made that turn south of the islands there was no finding reported. We had the final view in mind of coming back to Shelikof Strait.

Q At this time, you testified that you went north of the Barren Islands?

A Yes, if north is not appropriate, above the islands.

[255] MR. BRADLEY: At this time, your Honor, I would like to ask permission for the witness, the interpreter and myself, to approach the easel to which is attached Plaintiff Hodgson's Deposition Exhibit Number 7.

* * * *

Q Mr. Ichimura, have you ever seen this map before?

A Yes, I have.

Q When have you seen it?

A Yesterday afternoon in the basement of this building.

Q Who showed you the map?

A The person standing in front of me.

[256] Q Do the lines which are drawn on this map and which are lettered A and B have any significance to you?

A I think it is the reproduction of the course taken by the fleet headed by the Banshu Maru 31 around the 6th of April 1962.

Q And to the best of your memory, these lines represent the general course of the Banshu Maru?

A Yes, it must be the course of the fleet.

Q Were you searching for fish groups on this day?

A Yes. As I said, boats were instructed to do so while in cruise.

Q If groups of fish had been located on this day, would you have set your nets to capture them?

A Yes, most likely, they would have.

Q While on this route which you have described on this map as represented by Lines A and B, was the Banshu Maru interferred with by any authority?

A No, not at all.

Q Did you take this route north of the Barren Islands that you have described in order to enter a port?

A (Nodded to the interpreter.)

Q A port?

A A port, all right. No.

Q Did you enter a port north of the Barren Islands?

A No.

[257] Q Did you take this route north of the Barren Islands described on this chart in order to find shelter from the weather?

A No, it wasn't.

Q Did you enter on this route north of the Barren Islands to find shelter to repair damage to your vessels?

A No, there wasn't.

Q Mr. Ichimura, as you took this route which you have described and which is delineated on this map and you came here between Cape Elizabeth and the Barren Islands, did you think you were entering the territorial waters of the United States?

* * * *

[258] THE WITNESS: No, I had no knowledge of that.

* * * *

[260] MR. BRADLEY: Before Mr. Cranston begins his cross examination, there is a matter about the identification and admission of the map that I used in the direct examination of Mr. Ichimura. It is an exhibit to Plaintiff Hodgson's deposition. It is Exhibit Number 7. We wonder what procedure we should use to have it

identified here so it won't be confused with the Hodgson deposition as an exhibit to it as well as this.

THE COURT: Perhaps the record could reflect that the map referred to by the witness is that taken from the Hodgson deposition.

MR. BRADLEY: Dr. Hodgson, the geographer of the [261] Department of State.

MR. PHILLIPS: Is it presently marked? Why couldn't we use the same number?

MR. BRADLEY: No, it is not. It is subject to all of the qualifications and restrictions on depositions exhibits that you placed yesterday.

THE COURT: Well, it could be offered as a regular exhibit. The only trouble with that is to separate it from the deposition or, of course, it could receive both. I don't know as it would be particularly confusing. Why don't we give it the next number and then it may be returned to the deposition.

MR. BRADLEY: Thank you. I believe it is 116.

THE COURT: Is there any objection to receiving it as illustrative of this witness's testimony?

MR. CRANSTON: There is no objection to that, your Honor.

THE COURT: You mark it next in order, then, Mr. Clerk, and directly into evidence, and then it may be—after the witness has completed his testimony, it may be returned to the deposition.

THE CLERK: One hundred sixteen, your Honor.

THE COURT: One hundred sixteen.

(Plaintiff's Exhibit No. 116 received into evidence.)

* * * *

[262] CROSS EXAMINATION

BY MR. CRANSTON:

Q Mr. Ichimura, you have told us about the voyage you commenced on or about the 6th day of April around the Barren Islands, which is reflected on the exhibit. I would like to pursue that a little bit further with you.

Mr. Ichimura, after you left the area which on this chart is this area here (indicating), could you tell us where you went?

A We went to the waters close to Ban Bay.

Q And that, Mr. Ichimura, I believe is off the west coast of Kodiak Island; is that correct?

* * * *

[264] THE WITNESS: If you mean the west coast means the side [265] of the Shelikof Strait of the Kodiak Island, yes.

MR. CRANSTON: Mr. Clerk, does Mr. Ichimura have before him Exhibit 104? If not, I wonder if it could be handed to him?

THE CLERK: Yes, Mr. Cranston.

* * * *

Q Mr. Ichimura, I would refer you to page 41 of the exhibit to the entry in the last portion between the two heavy lines commencing 2110, and I would ask you to have—I would ask [266] that you read that through the use of the interpreter if necessary.

A "2110, got alongside Teal, T-e-a-l, U.S.A.F.D.O., fishing, inspect boat and came on board, fishery department officer."

* * * *

[267] MR. CRANSTON: At this point, I would read into the record the entries which have been explained to Mr. Ichimura.

"2110, got alongside Teal, U.S.A.F.D.O., fishing inspection boat, and came on board, fishery department officer."

"2300, cast off Teal. Captain went together by reason of breaching territorial waters. Otori Maru, Dairyo Maru Number 61, were suspected of breaching territorial waters. Soon arrested."

BY MR. CRANSTON:

Q I would ask Mr. Ichimura if he recalls these events.

A Yes, I do recall.

Q Is it true that the captain of the Banshu Maru Number 31 was arrested by the officials of the Alaska Department of Fish and Game as indicated in the log?

MR. BRADLEY: Excuse me, your Honor. At this time we have an objection. That calls for a legal conclusion which [268] the witness is not qualified to give.

THE COURT: No, he may answer if he knows. He may not speculate, so if he knows the answer, he may answer, but he must not guess at it.

THE WITNESS: Yes, what you said is correct.

* * * *

THE INTERPRETER: Mr. Ichimura's amplification, in answering to your question, after saying, "Yes, what you said is correct," Mr. Ichimura further states that he has no knowledge or recollection of whether it was an official from Alaska State Fish and Game or possibly United States Coast Guard or some other agency, because he recollects at the time of the boarding of the officer the request by the crew for presentation of a warrant was not heard, and as a result, no warrant was seen by anybody, thus making it difficult for Mr. Ichimura to recognize who it was, but it was most likely that it must have been some kind of government officer.

THE COURT: All right, go ahead.

[269] BY MR. CRANSTON:

Q Then, I can take it, Mr. Ichimura, that the captain of your vessel was taken into custody by someone and had to leave the vessel?

A It is a fact.

Q Do you know, Mr. Ichimura, if any other persons from either the Banshu Maru 31 or any of the other five vessels in your fishing fleet were taken into custody by anyone at that time?

A Yes, there were others.

Q How many?

A The captain and crew of all three, Otori Maru, and also captain and crew of Dairyo Maru.

Q Now, Mr. Ichimura, I would refer you to page 44 of the Exhibit 104, and I will read into the record the

entry appearing after the figure 1950, and ask the translator to read it to Mr. Ichimura.

"Got alongside Teal (U. S. Fishery Department and Game Inspection Boat). 1000, Cast off Teal. Captain been arrested. Again owing to take territorial waters into court, Alaska State."

Could you look that over, Mr. Ichimura, please? Mr. Ichimura, are you familiar with that incident?

A Yes, I am.

Q And was the captain referred to in the log entry once again Captain Mongo Hanasaki?

[270] A Yes, it is.

Q After the arrests, or after the incident which we have just referred to, Mr. Ichimura, was an agreement entered into between the Eastern Pacific Fisheries Company and the State of Alaska?

A Yes, I am aware of it.

Q Mr. Ichimura, one further question. Was the agreement of which you are aware reduced to writing?

A Yes, it has been.

MR. CRANSTON: I would like to hand the Clerk a copy of an agreement dated at Kodiak, Alaska, April 19, 1962, executed by the State of Alaska and the Eastern Pacific Fisheries Company, that agreement being a record in Criminal 62-141, 62-142, 62-1A, in the Superior Court for the State of Alaska, Third Judicial District, entitled, "State of Alaska, Plaintiff, versus Mongo Hanasaki, Mine Sotashi and Higashima Tadao," and I would like that—I will hand a copy to counsel. I would like that marked next in order.

THE COURT: It may be given the next in order for the State for identification.

THE CLERK: I-V, your Honor.

(Defendant's Exhibit I-V marked for identification.)

THE COURT: It may be handed to the witness.

[271] BY MR. CRANSTON:

Q Mr. Ichimura, you have been handed what has been marked for identification as State of Alaska Exhibit I-V. I would ask you to turn to the last page of that

document, and I would ask you if on that document you recognize the signature of Captain Mongo Hanasaki?

A Yes, there is such a signature, and I can personally recognize it.

Q And do you recognize personally the signatures of the other Japanese individuals on that document under the heading, "Approved and consented to"?

A Yes.

MR. CRANSTON: At this time, your Honor, I would move the admission into evidence of State's Exhibit I-V, which is a certified copy of a document by A. M. Vokachek, Clerk of the Superior Court, Third Judicial District of the State of Alaska, and which I described earlier.

THE COURT: Is there any objection?

MR. BRADLEY: No objection, your Honor.

THE COURT: It may then be marked.

(Defendant's Exhibit I-V received in evidence.)

* * * *

[272] Q Mr. Ichimura, I notice the agreement which has now been admitted as Exhibit I-V was signed on the 19th day of April 1962. Will you tell me what the fishing fleet of which you were involved did after the signing of the agreement?

A After the date of signing of this agreement, as a result of the terms and conditions agreed upon, the captains and crews of both the Otori Maru and Dairyo Maru, together with the captain of the Banshu Maru 31 were released from detention and therefore the three immediately proceeded to reorganize group operations and went southward through Shelikof Strait, going around the southern end of the island, again sailed northward on the Pacific Side of the island.

Q And did the group then engage in further fishing activity thereafter?

A Yes.

Q Where was that?

[273] A It would be much easier if I were next to the chart to point to the course, but short of that, let me say that the fleet went further north and turned east-

ward, the general direction of Juneau, and kept conducting detection and other surveys in the waters within the limits prescribed on the permit issued by the fisheries agent of the Japanese Government.

Q I take it, then, the fleet did not again enter the area of Shelikof Strait or Cook Inlet?

A No, you are right.

Q Mr. Ichimura, you were then aware, were you not, that the Japanese Government was consulted by your company about this agreement, Exhibit I-V?

A Of course, yes, but let me describe how we did it. It was evident at the time that there would be a very substantial financial loss incurred already as a result of the incident, and therefore, in proper discharge of our responsibility, we tried and did contact our government through our lawyers in Tokyo, checking on the important points of the problems we were faced with.

Q Mr. Ichimura, you also knew, did you not, at that time, that the agreement could not be signed without the consent of your government?

A I was—I had no knowledge of that.

Q Did you not know, however, that if there had been opposition from your government, the agreement would not have been signed?

[274] THE INTERPRETER: Excuse me. Opposition to the effect that they should not sign it, is that what you are saying?

BY MR. CRANSTON:

Q Did you not know, however, that in the event of opposition from your government, the agreement would not have been signed?

• • • •

THE WITNESS: Of course, we were waiting patiently for the instructions to come through from our Tokyo lawyers as to what to do about it. However, the actual condition that prevailed at that time, you might describe it as a chaotic situation, and there were conflicting news and information. Therefore, in the final analysis the decision to sign it was arrived at through a joint conference amongst ourselves.

BY MR. CRANSTON:

Q However, in rephrasing my question, Mr. Ichimura, would your company have signed this agreement, and would your group have agreed to the signature of this agreement if there would have been opposition from the Japanese Government?

• • • •

[275] THE WITNESS: I cannot answer that question.

BY MR. CRANSTON:

Q Mr. Ichimura, at the time when we spoke about this matter approximately two nights ago, did you not tell me in response to a question, the question being—

MR. CRANSTON: Do you want to interpret at that point?

BY MR. CRANSTON:

Q Would your company have signed the agreement if your government had opposed the signing of the agreement, that being my question. Did you not answer, "The agreement would not have been signed in the event of opposition from my government"?

A Yes, I did, but then I was expressing my personal opinion, and of course, in the final analysis and the final decision that was made through our lawyers in any event, and based on their decision, I would have discussed the matter and our operations group head would have made the final nominal decision as to what to do.

Q I take it, then, no opposition—that you were aware of no [276] opposition from your government concerning the signing of this agreement?

A I have no personal knowledge whether the Japanese Government made opposition to the act; however, I was aware at the time of it of a directive from the headquarters of my company telling us not to sign it.

• • • •

Q Let me ask this, Mr. Ichimura. Has the Eastern Pacific Fisheries Company since the time of the signing

of this agreement conducted fishing operations in Cook Inlet or Shelikof Strait?

A No.

Q Do you know of any other Japanese company whose fishing vessels have engaged in fishing in Cook Inlet or Shelikof Strait since the date of the signing of this agreement?

• • • •

[277] THE INTERPRETER: Yes, he did. His answer was, "I don't know."

BY MR. CRANSTON:

Q Mr. Ichimura, going to your testimony which you referred to this exhibit which has been marked as Exhibit 116 in this case, can you give me an approximation of the amount of time which elapsed between the time you were at what has been indicated as Point A or Point B and until you reached the location which is indicated as 1200 hours, 4/6/62?

A You see, as I remember, the 1200 hour position record on the preceding day is somewhere below the middle of the Kodiak Island on the Pacific side. Therefore, judging from that, the number of hours spent in between these two points you mentioned, namely from A and B to that day's 1200 hour point, it must have been, I think, something like 10 to 12 or perhaps more like 12—10 hours.

Q Now, Mr. Ichimura, during that period of time which is represented by the lines drawn on Exhibit 116, did any of the vessels involved have any fishing nets out?

A No.

Q Or were any other type of fishing gear such as lines or purse seines being used or out of the boats?

A You see, I was, as you know, on the motorboat, not within visual distance from the catchers most of the time. Therefore, [278] when I say that they were not using the gear in the water, my statement is based on the assumption that they should not have been using the gear in the water because they normally do not drop the gear in the water unless fish schools have been found through the detector, and I also happen to know that in

this time period there was no reporting by any one of the catchers of finding of any fish schools.

Q So, then, the reasonable conclusion is, is it not, Mr. Ichimura, that there were no nets, fishing gear, lines or other type of fishing gear in the water?

A Yes, it is quite reasonable.

• • • •

Q A few more questions, Mr. Ichimura. First, did you observe the presence of any vessels from the Alaska Department of Fish and Game during the period of time that you were cruising between Points A, B, and the 1200 hour location on Exhibit 116?

A No sighting of Fish and Game boats around Barren Islands, nor in the subsequent cruise time until 1200 hours point. However, I have recollection of sighting a vessel before we came into the waters shown on that chart, and the position was somewhere northeast of Kodiak Island below Barren Island, [279] facing the Pacific Ocean we sighted a boat which might have been an Alaska State Fish and Game vessel, or can equally have been United States Coast Guard boat. We weren't certain, but both our boat and this vessel exchanged signals by the use of flags, mutually wishing safety on the sea.

Q And this was, Mr. Ichimura, prior to the time you arrived at the Point A-B on that exhibit; is that correct?

A Yes, it is.

Q Mr. Ichimura, have you ever had any training in the subject known as international law of the sea?

A No.

Q And have you ever, apart from any training you have had, ever studied the legal regime of historic bays?

A No.

Q I take it, then, your testimony in response to Mr. Bradley's question to which I objected while you were standing up here at Exhibit 116, it was not based on any teaching or opinions on your part relative to the legal status of the waters in which you may have been?

A Of course, I was—I was not with any such trained knowledge at the time of the cruise. However, as I have

told you before, throughout the time we spent together on the ground we were in continuous conferences amongst our group including the captain of the boat, and since captains never make any mention of such legal problems, regimes, restrictions, I was [280] of the impression that—no, I was unable to obtain any expert knowledge on the subject.

MR. CRANSTON: I have no further questions, Mr. Ichimura.

THE COURT: Any redirect examination, Mr. Bradley.

MR. BRADLEY: Yes, sir. May I have a second?

THE COURT: Yes, you may.

MR. BRADLEY: Your Honor, Mr. Cranston, on cross examination, opened the subject of the collaboration and the knowledge of the Japanese Government and their relation to the fishing vessels signing this agreemnt. At this time, we would like to read into the record the Japanese response to this agreement.

"Ambassador of Japan presents his compliments to the Honorable Secretary of State, and with reference to the recent incident involving Japanese fishing boats off the coast of Alaska, has the honor, under instructions of his government, to make the following representation. One, a fishing fleet consisting of the mother ship HIKK, East Pacific Fisheries Company, was engaged in herring fishing."

• • • •

[281] THE COURT: Are you reading from an exhibit?

MR. BRADLEY: Yes, your Honor, United States' Exhibit Number 57, which is a diplomatic note from the Government of Japan to the United States.

• • • •

[282] MR. BRADLEY: If the State will stipulate that the vessels mentioned in this exhibit that is in the diplomatic note is the same vessels upon which Mr. Ichimura served as a member of the operations committee—

MR. CRANSTON: Does it refer to the Banshu Maru Number 31, may I ask?

MR. BRADLEY: A fishing fleet consisting of the mother ship Banshu Maru Number 31 KK, East Pacific Fisheries.

MR. CRANSTON: We fully agree, your Honor, they're the same vessels.

THE COURT: The stipulation may stand of record. Now, you may direct a question to the witness.

• • • •

DEFENDANT'S WITNESSES

[300] DONALD M. ROBERTS

being first duly sworn upon oath, testified as follows:

THE CLERK: Please state your full name for the record; and spell your last name.

A Donald M. Roberts, R-o-b-e-r-t-s.

The COURT: Counsel?

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Roberts, what is your present address?

A 217 Bentley Drive East, Fairbanks.

Q What is your occupation?

A Regional supervisor for the Division of Protection, Alaska Department of Fish and Game.

Q How [*sic*] long have you had that occupation?

A I have been with the department for 12 years. I have been in Fairbanks six years.

Q I take it, then, you have been with the Alaska Department of Fish and Game since Alaska became a state?

A Well, since they took control of their resources as of January 1 of '60.

Q Prior to that time, by whom were you employed?

A Well, prior to that I was in the wholesale business in [301] Anchorage for a while.

Q And before then did you ever have any employment with the United States Government?

A Yes. I was employed as an enforcement agent for the United States Fish and Wildlife Service.

Q And while you were an enforcement agent were you ever employed by the Fish and Wildlife Service in the Cook Inlet area?

A Yes, I was.

Q All right. What was the first year you were in the Cook Inlet area?

A 1951.

Q All right. What were your duties there in 1951?

A In 1951 I had a title of biological aide. During the summer I worked for the Commercial Fisheries Section of the Fish and Wildlife Service.

Q All right. And generally what were your duties?

A Well, general duties for that summer for stream surveys, stream counts, and assisting with the enforcement on Cook Inlet at the peak of the red salmon run.

Q All right. Were you stationed on any patrol vessel during that period?

A Yes. I was aboard the vessel Steelhead.

Q Now, could you describe briefly the area which you patrolled in Cook Inlet while you were on board the Steelhead?

[302] A Well, I was—the red run was already started, and the area, of course, was new to me, as you understand, having been new to Alaska that year, but it is my recollection we started patrolling south of—picked up the fleet south of Kalgin Island and moved with them as the fish moved, checking boats for proper registration and seeing that they didn't fish closer than the legal distance between gear. And we boarded—would board vessels every day checking their registration against their vessel plate numbers and also we would measure lengths of the drift gill nets. They were restricted to certain lengths, and some fishermen once in a while would have a tendency to put on another shackle or two, and also they were not allowed to carry more than the legal limit of gear aboard.

We checked the vessels to see if they had extra hung gear aboard.

Q Now, is this generally the type of activity you were concerned with during these patrols?

A During my stay on the Steelhead that summer, yes, that was our primary concern.

Q While you were on the Steelhead, did you patrol the area which would be south of a line drawn from Herring Point to the southern end of the Kalgin Island, and thence over to Ninilchik?

A Yes.

Q And did you concern yourself or pay any attention to whether [303] you were more than three miles from any shoreline in that area?

A Our only concern was being with the fleet and checking them, which is out in the middle of the inlet.

Q Can you describe the area in Cook Inlet in 1960—1951 where you did patrol south of that line which I just described?

A You mean 1952?

Q Right. Is this the year you are testifying to?

A 1952, I am speaking of, yes.

Q Oh, I believe earlier you may have said 1951.

A Oh, I am sorry. I am in error. I wasn't even in Alaska in 1951.

Q Oh, all right, 1952.

A You want me to describe—would you repeat the question?

Q The area over Cook Inlet over which you patrolled in 1952 while on the Steelhead.

A Well, there was—I can't be real precisely exact, the degrees and latitude then, but it was—I was put aboard, I know we were south of Kalgin Island because there was another fellow aboard a Grummin Goose that set us off and we dropped him off at Kalgin Island to assist in the stream guard there, and then we flew south and I don't know how long we flew or how many minutes, but we flew south and they dropped—and put me aboard the Steelhead, and then that is where I spent my time for the next—it might have been 10 days or two [304] weeks.

I just really don't recall exactly now. Following the—working with the fleet, following them north as the fish moved on up from that point, mostly up along the east side of Kalgin Island and the fish moved around the island, and then on north, and then they go—they go moving back around the north side of the island.

Q Did you patrol as far south as the latitude of Anchor Point that year?

A It would be possible, but I couldn't say for sure that year.

Q Now, did you return to Cook Inlet, the Cook Inlet area in any later years?

A Yes, I did. I was there—well, the fall of '52 I took a permanent position then with enforcement, protection, of Fish and Wildlife Service as enforcement agent. The following summer I went down—well, left Anchorage on the patrol vessel Chum, well, probably a little bit after the middle of May, because the fishing season used to start in May, but it used to vary from year to year, so maybe, say, around the 22nd, 23rd or 24th of May, left Anchorage on the Chum and patrolled south and then stayed down there working on the Kenai River, Seldovia, and patrolling the fleet, the drift fishery, salmon fishery.

Q Where was the drift fishery located in Cook Inlet? Could you describe the approximate geographical location of that drift fishery?

[305] Q Yes. It is basically the same as I have already outlined in 1952, because the fish pattern from year to year is essentially the same, and we would pick the fishery up—excuse me—pick the fishery up at a line from about Anchor point, because there was no drifting allowed below that, and move in south of this Anchor Point line to make sure that there was no one fishing in there. The fish would move in and as they would cross this line, then, of course, they were allowed to start fishing for them with the drift nets. So, we would do some patrolling in this, called the closed area to drift fishing, and then as I recall, the aircraft used to fly us to that area and then we would get with the fleet and follow them right on north right up through the center of the inlet toward Kalgin as the fish moved, and right

up around the island, and the same pattern up to the north end and the fish would break off and go into the various rivers.

Q Could you describe where this closed area was located?

A The closed area I mentioned to the drift fishing?

Q Yes.

A There was no drift netting south of a line from Anchor Point south.

Q Now, did that line extend across Cook Inlet?

• • • •

[306] Q You testified, I believe, that there was a line at Anchor point. I am just wondering, did that line extend to a point on the opposite shore of Cook Inlet for purposes of the regulations?

A Well, as I recall, that was correct. There was no drifting from a line north of Anchor Point. Anything south of this line was closed to drift netting, gill netting.

Q And did you determine whether the closure to drift netting south of Anchor Point included an area more than three miles from the shoreline of Cook Inlet south of Anchor Point?

A There was nothing in the regulations that stated this.

Q Did you—

A The three miles didn't enter into it.

Q Well, let's put it this way: Did you determine that your patrol responsibility was to prevent drift netting more than three miles off shore south of Anchor Point?

A No, just to prohibit drift netting in that whole general area south of this line, and—

Q What I am trying to get at, what do you mean by "the whole [307] general area"?

A Well, there was an area, I think we used to call it the Southern District, from Point Gore and Cape Douglas north, and then there was another line that—this Anchor Point line, so there is a space in between. I see you have got a map over there. There is a space in there we refer to as the Southern District. It was

open to seining, but not open to gill or drift netting in this area, in this—I think it was called the Southern District. It was open to fishing, but not that type of gear.

Q So, did you determine that you would enforce this regulation throughout all that water area that you have just described?

A Oh, yes. This area takes in Kamishak Bay on the west and Kachemak on the east, or not the—not Kachemak, but Point Gore. Kamishak and Kachemak, excuse me, both of them. There was that whole area cross there that if there had been any fishing in this area, drift netting, we'd have apprehended them.

Q Now, did the drift fishery in 1953 exist in an area north of Anchor Point more than three miles from the shore?

A Yes.

Q And what did you determine your patrol responsibility to be in that area concerning the drift net fishery?

A We are speaking north of Anchor Point, correct?

Q Right.

[308] A Well, my area of responsibility, as I understood it by regulations, for the fisheries of Alaska, that it was from bank to bank of the inlet, the whole body of water, and people were expected to comply with the regulations, and if they didn't, regardless of where they were, a mile from shore or 10 miles from shore, they would be apprehended, if they were in violation of the regulations.

Q All right. Now, passing up 1953, did you have any duty in the Cook Inlet area in any subsequent years?

A 1954.

Q All right, what were your duties in the Cook Inlet area in 1954?

A Well, enforcement. I was agent in charge of the Cook Inlet fisheries for enforcement purposes in 1954.

Q All right. Now, generally during 1954—how long were you in this position, then?

A Well, it was for the entire summer when the fisheries were active.

Q You stated you were agent in charge of enforcement; is that correct?

A Agent in charge of enforcement for the commercial fisheries.

Q Did you ever engage in patrols that year?

A Continuously, yes.

Q And what type of equipment did you use for your patrol activities?

[309] A I had at my disposal a Grumman Goose. It's a twin-engine amphibious aircraft, and a pilot. I am not a pilot.

Q So, I take it you conducted your patrol activity with aircraft; is that correct?

A That is correct. I ran my patrol activities from aircraft, then I had two patrol vessels in the inlet, and I had both officers and agents aboard those patrol vessels patrolling, also.

Q All right, when you were engaging in these aerial patrols, where would you fly?

A Well, I covered my entire area of responsibility, which was from—well, the Cook Inlet area as described by the regulations, which is actually all—as I recall it now, it is all the waters of Cook Inlet from Point Gore and Cape Douglas north, and all the waters as tributary in this enclosure. Then I had—then I had also included under my jurisdiction for enforcement was the Resurrection Bay area and that went—took the outer—called the outer district, the outside of the Kenai Peninsula which runs from—it was Point Gore over to Cape Fairfield.

Q Now, did you engage in aerial patrols in Cook Inlet over all of the area which you have described?

A The entire area I described on practically a seven-day-a-week basis, yes.

Q And this was while you were on an aircraft?

[310] A That is correct.

Q Did you engage in any vessel patrols this year; that is, 1954?

A I was not personally aboard vessels on patrol, no, but I directed their activities, but I was not personally aboard.

Q All right. Now, we have talked a lot about patrols in the three years. Could you describe perhaps in some

more detail what was the purpose of what you have described as a patrol? What was the function of the patrol?

A Now we are speaking of this '54, or in general?

Q We are speaking in general.

A Well, the purpose of—our whole purpose in life as enforcement agents in working this fishery, of course, was to enforce the federal fishery regulations for the protection of the fisheries in the Territory of Alaska. And in our prescribed areas, of course, in the area I was assigned was Cook Inlet, and I patrolled the area, and people that later worked for me patrolled it to enforce and prohibit violators—apprehend violators of these regulations anywhere within this prescribed area of Cook Inlet and the Resurrection Bay area.

• • • •

[312] Q Would you describe for the Court the type of regulations which you were enforcing in these patrols relative to the drift net fishing?

A Well, if I follow you correctly, regulations, as I recall them, limited the length of gear and area in which you may fish; hours, days that you may fish, such as this as no—I mentioned earlier, you're not allowed to carry more than the legal limit of gear aboard. There were—used to measure sizes. this sort of thing, in relation to the drift fishery.

Q And was it in these same regulations you are describing that the prohibition of drift netting south of the Anchor Point line, was that among these regulations?

A Yes, that is correct, that is part of it.

Q Now, you have described your enforcement, your duties as agent in charge of enforcement pertaining to two areas, one the Cook Inlet area, and the second one, the Resurrection Bay area. Now, we have been talking about regulations. Generally, what was the source of these regulations? Was it a book that you received?

A Yes, they were. It was published—the published regulations, and of course, there were copies given to me by my superiors which they received from Washington, D.C.

Q All right. Now, with respect to the Cook Inlet area, did [313] you determine—this was again in 1954 while you were agent in charge of enforcement in the Cook Inlet, you did determine the geographic area over which you had authority to enforce these regulations?

A Yes, from these published regulations.

Q All right. In other words, you did determine the area, and in making that determination you relied on these published regulations?

A That is right.

MR. CRANSTON: I wonder, Mr. Clerk, could I have State's Exhibit IU. It's been marked for identification.

BY MR. CRANSTON:

Q Now, Mr. Roberts, I am going to ask the Clerk to hand you Exhibit IU, and I have a white piece of paper at page 34 of the portion of that exhibit entitled, "Laws and Regulations for the Protection of the Commercial Fisheries of Alaska, 1954." When the Clerk hands you that exhibit, I wish you'd turn to the—

MR. CHARNEY: May I please see that? What was marked here?

THE COURT: 1954 regulations, Mr. Charney, page 34.

BY MR. CRANSTON:

Q You have that in front of you, Mr. Roberts?

A Yes.

Q All right. Now, you stated you had determined the [314] geographical area over which you had authority to enforce the regulations in that you had relied on the regulations. When you referred to the regulations, was it those 1954 regulations which you have before you?

A Yes, this would be correct.

Q Now, is the regulation upon which you relied set forth at page 34?

A Yes.

Q And what regulation is that?

A Cook Inlet Area, Part 109.

Q All right. Now, would you read the number, and read the regulations, please?

A You want which? You want the particular section, or—

Q That one you read, the Cook Inlet Area.

A Well, Cook Inlet Area, Section 109.1. "Definition of Cook Inlet Area is hereby defined to include Cook Inlet and its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Q All right. Now, that is the regulation you relied on; is that correct?

A Yes, that is correct.

Q Now then, based on that regulation, what area of Cook Inlet did you determine you had enforcement authority within and over?

[315] A Based on this?

* * * *

Q In order to carry out your duties in Cook Inlet as the agent in charge of enforcement, was it necessary for you to determine the area over which you had enforcement responsibility?

A Well, it wasn't up to me. It was up to my supervisors as to what I was instructed to do, the type of program to conduct [316] in the area I was responsible for in enforcing the regulations. The area I was responsible in enforcing the regulations were confined in this as described here by the definition, this being what I wouldn't go beyond, because that is another fishery agent's and another agent in Kodiak is in charge of it, so I am just concerned just in this area as described in the definition.

Q All right, and then you have testified that you patrolled throughout the entire area, water area, as described?

A That is correct, the entire area, in addition, as I mentioned earlier, the Resurrection Bay area.

Q Now, in order to carry out your duties as agent in charge of enforcement in the Resurrection Bay area,

did you determine the geographical area over which you had enforcement authority?

A In the Resurrection Bay area?

Q Yes.

A Well, yes, it was the area, to mention the general —from Cape Gore to Cape Fairfield, and all the tributaries that enter into the Gulf of Alaska between these two points, and bays and inlets in this area. This is primarily a seine fishery down there. Drifting was prohibited and we patrolled from—now, you are talking about three miles here. A little while ago I was a little confused because it didn't apply to us in our—in the way we enforced regulations up [317] there in the inlets, but down here it was a different matter. We were concerned with the three-mile limit there and we ran our patrols differently. Sometimes we would fly out approximately three miles, maybe two miles, and you can see from the air, of course, a long ways, and then fly in the bays and inlets and so forth, patrol for any illegal activities.

Q All right, I wonder if you would turn to—in that same Exhibit IU which is in front of you there, there is a page marked with a yellow marker, and do you see on that page the definition of the Resurrection Bay area?

A Part 110, Resurrection Bay Area, Section 110.1.

Q All right, is this the area over which you also had enforcement responsibility?

A Yes, that is correct.

Q And does that definition set forth the—is that the definition of that area?

A Yes. Would you like me to read it? "The Resurrection Bay Area is hereby defined to include all territorial coastal and tributary waters in the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east."

Q And it is within this area that you determined you were—that there was a three-mile limit applicable, is that correct?

A Yes, that is correct.

[318] Q Now, let's suppose, going back to Cook Inlet, and your patrols—what procedure would you follow in your patrols on the inlet, no matter what year, whether it was '52, '53 or '54, had you perceived a violation in the drift gill net fishery more than three miles from shore?

A Same way we'd handle any violation. We would have apprehended the individual.

Q Could you describe exactly the procedures you would go about in doing this?

A Well, you would detect what the violation is, and then, weather permitting, whether in aircraft or vessel, come alongside and board them, inform them of the violation that they were—section of the law they're in violation of, and advise them to proceed to Seldovia, Kenai area, where there was a United States magistrate or commissioner, and we would arraign them and charge them with the violation of these regulations.

Q Did you ever make any boardings of vessels more than three miles from the shore in Cook Inlet in the area south of a line connecting Harriet Point, Kalgin Island and Ninilchik?

A Probably 95 per cent of our boardings were in this area, were out in the center of the inlet, because that is primarily where the—where the drift net fishing took place, where the schools of fish were.

Q And would these boardings take place down as far south as [319] a line in the inlet equal to the latitude of Anchor Point?

A Oh, yes.

Q During the period of time you were in Cook Inlet, did you ever observe any Canadian halibut vessels fishing in Cook Inlet?

A No, I did not.

Q Were you aware that there was a Canadian halibut fishery carried on in the Cook Inlet?

A Not to my knowledge, not during those years.

Q Were you aware of any determination that had been made relative to allowing Canadian halibut boats to remain unmolested in Cook Inlet from a federal enforcement standpoint?

A No, I don't recall it; anything like that. There was—I just don't recall, because the regulations would prohibit it. I just don't recall anything like that.

Q When you say "the regulations would prohibit it," what do you rely on in making that statement?

A Well, back in there you are talking about 18, 19 or 20 years ago here, but somewhere in here, I don't think it would be too hard to find, there is an alien—a prohibition against foreign vessels or alien vessels fishing in Alaskan waters, and if they had been in Cook Inlet as described in the regulations—

* * * *

[320] Q Would you continue? Were you going to continue to answer?

A I guess I was. I was just—I guess I was thinking of if there had been any vessels in Cook Inlet as described by the regulations, we would have apprehended them because it prohibited the taking of fish from this area by foreign vessels.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Roberts, I am going to ask you—

MR. CRANSTON: One matter, your Honor. I wonder at this point, we have had Exhibit IU marked for identification. It is the regulations which formed the basis of Mr. Roberts' [321] testimony and are federal Fish and Wildlife Service regulations, the Court could undoubtedly take judicial notice of them, but we would request they be admitted as an exhibit.

* * * *

[322] THE COURT: You may then release it to Mr. Cranston at the time of recess, Mr. Clerk.

With that understanding, it may then be received and marked as IU directly into evidence.

(Defendant's Exhibit IU received in evidence.)

* * * *

[335] FRED F. HEADLEE

being first duly sworn upon oath, testified as follows:

THE CLERK: Please state your full name for the record, and spell your last name.

A Fred F. Headlee, H-e-a-d-l-e-e.

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Headlee, what is your address?

A Box 806, Ketchikan, Alaska.

Q And what is your present occupation?

A I am retired federal employee.

Q Mr. Headlee, were you ever employed by the United States Fish and Wildlife Service in the region of Cook Inlet, Alaska?

A Yes, I was.

Q And what were the years that you were employed in the Cook Inlet area?

[336] A 1944, 1945.

Q And during those years, what were your duties?

A I was the fishery management agent in charge of the Cook Inlet District.

Q When you were in the Cook Inlet District in 1944 and '45, were federal regulations in existence?

A You say were they in existence?

Q Yes.

A Yes, they were.

Q And did you look to these regulations and rely upon them to determine the geographical area of your responsibilities?

* * * *

Q Mr. Headlee, what did you look to to determine your area of responsibility in Cook Inlet?

A It was defined in our book of regulations.

MR. CRANSTON: All right, I would ask the Clerk to hand the witness Exhibit IU.

THE COURT: The witness has the exhibit.

BY MR. CRANSTON:

Q Mr. Headlee, do the 1944 regulations appear in that exhibit?

[337] A Yes, sir.

Q All right, would you turn to that booklet of 1944 regulations? Have you found the 1944 regulations?

A Yes. It is not—

Q Then, let me ask you another question. Does the regulation upon which you relied to determine the geographical area of your responsibility appear within those regulations?

A Yes, they do.

Q And would you refer to them and tell me what regulations you relied upon?

* * * *

Q Would you refer to them and tell me—

A It is Section 209.1, Definition, Cook Inlet Area. "The Cook Inlet Area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area."

Q And what you just read was the regulation; is that correct? You have just read the regulation?

A Yes.

[338] Q Now, would you turn to the 1945 regulations as they appear in that bound volume? Are they in that volume, the 1945 regulations?

A Yes, they're right here.

Q All right, would you refer to the regulation upon which you relied to determine the geographical area of your responsibility in 1945?

A It's exactly the same section, 209.1.

Q All right, and would you read that, please?

A "Definition of Cook Inlet Area. The Cook Inlet Area is hereby defined to include Cook Inlet, its tributary and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area."

Q Thank you, Mr. Headlee. You may close the book of regulations if you wish. Now, generally, what were your responsibilities in the Cook Inlet area in 1944 and 1945? What exactly did you do?

A Enforcement of the regulations, gather statistics and make any recommendations for the following year.

* * * *

[339] Q What did you do in order to enforce the regulations? What type of activities did you engage in?

A I was aboard the vessel Teal with an outboard motor, a fast one, and we patrolled the entire inlet as much as possible with the time we had.

Q How far south of the inlet did you patrol?

A Well, mainly the lower—the Kenai Peninsula and occasionally out to the Barren Islands.

Q What was the purpose of these patrols?

A To enforce these regulations.

Q And by "these regulations," to what are you referring?

A The regulations in the Cook Inlet District as referred to in this book I just read out of.

Q All right, were you furnished a copy of these regulations?

A We were furnished hundreds of copies, and we kept them and distributed them to the fishermen.

Q Do you know why you were furnished a copy of these regulations?

A So we would know exactly what we were doing.

* * * *

[340] THE WITNESS: That is really what we relied on all the way through for area and our duties.

BY MR. CRANSTON:

Q Did you rely on any other acts or laws which may have appeared in that booklet you were furnished?

A This same booklet refers to the Alien Fishing Act.

Q And did you rely on that act?

A Absolutely.

Q For what purpose?

A For enforcing the regulations for any aliens.

MR. CRANSTON: I have no further questions of this witness, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Headlee, while you were in charge of the Cook Inlet Fisheries Management Area, how much equipment—fishery patrol equipment was in the inlet at that time?

A During 1944 we had the vessel Teal and a fast outboard motor, with a plane if we chartered it, if we needed it.

Q Is that all the equipment that was there to cover the entire inlet?

A That's right.

Q How long was it there during each season?

A During every season probably from early May until September.

[341] Q The Teal was there that entire time?

A Right.

Q And your primary concern was the salmon fishery; is that correct?

A Yes, it was.

Q Did you patrol other fisheries?

A Well, anything that was called upon in the regulations.

Q Now, you said that part of your duty as a fishery management agent were to make recommendations for the next season. This was done in a meeting, wasn't it, between fisheries agents and fishermen?

A We wrote in our recommendations and then, if there were any questions, they were all taken under advisement.

Q So, there were conferences between the fishermen and the fishery management agents at the completion of each season as a matter of procedure?

A Actually, not as there were in later years, at that time.

Q But, you did know where the fishery—the concentrated area of fishing in each season would be. You didn't patrol where there wouldn't be fisheries; is that correct?

A Wherever there was an open season, and of course, in others we patrolled mainly and then we kept the rest of the inlet occasionally in case there was somebody outside of the open areas.

Q But, the prime focus of your patrol was in the areas where you [342] knew there was fishing; is that correct?

A That's right.

Q And even then, you didn't have enough equipment to do this sufficiently; isn't that correct?

A We figured we covered it pretty well.

Q You did. Would you describe the area that one boat covered each season in the inlet?

A The entire inlet.

Q And that is the entire shoreline for beach seines and for traps?

A All over the inlet.

Q I see. Can you tell me what your title was again, please?

A At that time I was a deputy fishery management agent.

Q And who was your superior in the inlet at that time?

A I was in charge.

Q You had no superior?

A Not in the inlet.

Q Who was your immediate superior?

A I believe his name was Culvertson. He was the supervisor for Alaska fisheries. He was stationed in Juneau.

Q And who was his superior?

A The regional director.

Q During the course of your patrols, did you ever arrest or cite or board—well, arrest or cite American fishermen in the middle of the inlet more than three miles from a line [343] along the shoreline?

A Well, we didn't pay any attention to any three miles, because it was all our area and we actually didn't see anybody fishing out in the middle of the inlet.

Q So, there was no fishing in the middle of the inlet at that time?

A No, sir.

Q So, your primary patrol was not in the middle of the inlet because, as you testified earlier—

A Only when we crossed from one side to the other.

Q Did you ever see foreign fishing vessels in the inlet?

A Never.

Q Then, you never cited a foreign fishing vessel in the inlet?

A Never.

Q You never had any occasion to enforce the alien fishing regulations that you mentioned?

A No, I didn't.

MR. BRADLEY: No further questions, your Honor.

THE COURT: Any redirect?

MR. CRANSTON: I would just like one or two, your Honor.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Headlee, you testified you never cited any foreign vessels in Cook Inlet. Was there a Canadian halibut fishery carried on of which you were aware during 1944 and '45 in [344] Cook Inlet?

A Not to my knowledge.

Q Did you ever see any Candian vessels in the inlet?

A I couldn't say that I had. There was one that pulled into Port Dick in the middle of the night one night to get out of a storm. I am not sure whether it was Canadian or American.

Q What did you do on this vessel?

A I boarded it and checked to see whether his license was validated, and carried on the time of day and everything was fine, so I went back to my ship.

• • • •

RECROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Headlee, you have just spoken about a vague incident where you boarded a vessel which you weren't clear whether it was American or Candian.

A I said that I wasn't sure just to this day whether it was American or Candian. He had a validated halibut license and he was in during a storm only. Otherwise, he'd have been out.

Q Could you describe the halibut license he had, the nature of [345] it?

A The halibut fisherman is required to have a valid—a validated license which is validated by the U.S. Customs after every trip, and at that time they had 90 hours, I think.

Q Where was the vessel located?

A In Port Dick, in a safe harbor for the night.

• • • •

[456] MITCHEL P. STROHL

being first duly sworn upon oath, testified as follows:

• • • •

[457] DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Strohl?

A 96 Rue Thiers, 92 Boulogne-Billancourt, France.

THE COURT: Just a moment. Can you spell that for the court reporter?

THE WITNESS: B-o-u-l-o-g-n-e—B-i-l-l-a-n-c-o-u-r-t.

BY MR. CRANSTON:

Q What is your occupation?

A I am registrar and lecturer in political science at the American College in Paris, in France.

Q And I take it, then, that you are a professor; is that correct?

A Currently at that college I do not hold that title. I have in the past, yes, and I am called that.

Q All right, Professor, would you tell us what your educational background has been?

A I am a graduate of the United States Naval Academy. Also a graduate of the United States Naval War College, Boston University and the Fletcher School of Law and Diplomacy.

Q Now, tell us a little bit about the courses which you took in the United States Naval Academy.

A Well, the course at the Naval Academy, and especially in my time, there is primarily a professional course with a view toward the graduate becoming an active line naval officer, and [458] especially devoted to navigation, seamanship, ordinance and gunnery, a good bit of mathematics, engineering with a certain sprinkling of the liberal arts and history and English, plus quite a good bit of language study, too.

Q All right, and what sort of courses did you take at the Naval War College?

A The Naval War College is a highly professional institution primarily devoted to staff management, but with peripheral courses in such things as national strategy, international relations, international law, and also, strangely enough, public speaking and various peripheral activities.

Q All right, would you tell us what your past employment has been?

A Yes. I am a retired naval officer with 22 years of active service as an officer over and above the Naval Academy. During that time, I performed about 15 years at sea, including six specifically as a navigator, in most of the waters of the world. After that time, I was an associate professor and head of the department of gov-

ernment at Lycoming College in Williamsport, Pennsylvania.

Following that, I was executive secretary of the League of Americans residing abroad, which is a political lobby, and after that, I took my present job which I hold at the present time.

Q Now, you have stated that you did spend 15 years at sea and [459] that you were a navigator. Would you tell or describe the voyages, generally, where you have been at sea?

A In the early part of my career, I spent it nearly all in the Pacific in World War II, about one year, incidentally, in the Aleutian Chain of Alaska. At other times in various places in the South Pacific, in Japan, and following the war it was nearly all in the Atlantic with a very great deal in Europe and the Middle East, occasionally in the north of Africa.

Q Now, could you describe generally what your duties were on these voyages as a navigator?

A The navigator is, on an American naval vessel, by law and regulation, is totally responsible for the navigation of the ship and advising the commanding officer. In that connection, one had to do all of the celestial navigation on the high seas and do what in the generic term is called piloting, which is navigating the ship in sight of land, in bays, estuaries, inlets, harbors and closely along the coast. I have done this in most of the waters of the world, I think.

Q Now, when you were not serving during these years as a navigator, what were some of your functions while aboard ship?

A At a very early time, I was chief engineer of a destroyer. By the way, all my sea duty was on destroyers and small ships. In addition to that, and then somewhat later, I was a radar officer or combat information center officer, which, incidentally [460] has a very large responsibility for navigation, also.

Following that, I was gunnery officer, and then, as I said, for six years I was navigator. And following that I was a commanding officer. Then, I did one period which was more or less sea duty a good part of the time in

educating others which I was head of a mission in Saudi Arabia.

Q During your capacities on board ship while you were not serving in the function of the navigator, was it necessary that you familiarize yourself or be aware of navigation?

A Absolutely. I might qualify that by saying on a small ship this is necessary because the duties are not categorized or departmentalized to the same extent that they are on a large one, and I was never on a large ship.

Q Now, Professor Strohl, getting up a little further, have you made any studies concerning the navigational and marine characteristics of Cook Inlet in order to prepare yourself for your testimony in this case?

A Yes.

Q All right, what research have you done with regard to this?

A As a preliminary, of course, I studied a good bit about Alaska in general, including history of Alaska. Following that, and more specifically, I studied the charts, the sailing directions, all of the normal qualifications, all of the normal publications that would have to do with navigating Cook Inlet. In addition, for comparative purposes, I went [461] into the sailing directions of France, Britain. I had a translation made of the Japanese sailing directions, and then I did some comparative study with—concerning other bays in the world, I guess about 30 of them, and I did most of this work at the International Hydrographic Bureau in Monaco, which was the closest access to me.

Q All right, you have indicated, Professor, that you read or researched other publications concerning Cook Inlet. What would those have been?

A In addition to the sailing directions were the light lists, the tide tables, the current tables, some weather reports including air navigation charts. I went thoroughly into the Coast and Geodetic Survey report that was written after the 1964 earthquake to see what light that might shed upon it. I think that is about it.

Q And within this research were there materials on the subject of navigation?

A In one form or another, yes. Also, some, for example, the Coast and Geodetic Survey report of the earthquake had quite a bit to do with surveys taken in the Cook Inlet.

Q All right, in addition to your research, have you familiarized yourself in any other way with the marine and geographical characteristics of Cook Inlet?

A Yes.

Q And when did you do this?

[462] A Last summer in early July I came up here for that purpose, among others, and as part of an experience at that time I boarded the ferryboat Tustamina to travel from here to Kodiak and return, which is about a 48-hour trip, as I recall. Perhaps I had better explain a little bit how I went about that.

Q Yes, please do so.

A You see, in the normal life of a naval officer, in becoming acquainted with a particular body of water one reads all the books and if one has to know the place thoroughly, such as Norfolk or Newport, Naples, in my case, you make so many trips in and out that if you don't see something one time you see it the next time, but in this case, of course, I did not have a chance and I had to familiarize myself with it as absolutely and completely as possible within the time available, so that from the time I was on the Tustamina, I spent the—nearly all of it on the bridge and talked to the ship's officers, saw precisely what they were doing from one end to the other, made continuous observations with them, followed it all on the chart from one end to the other twice, made all the—what I thought were necessary observations of the waters and had the fathometer on all the time in order to learn as much as I could in the shortest possible time, which was all the time I had available to me. Then, following that, just in order to refresh my memory and get another look [463] two days ago in a Fish and Game Department airplane, a rather slow flying airplane, altitude about 500 feet, I made a flight all the way down Cook Inlet on one side, down to the Barrens, Cape Douglas, Cape Elizabeth, out the Barrens, up the other

side, took about three and a half hours, I think. This familiarized me reasonably well.

Q All right, I take it, then—let me ask you this: Was this sufficient, in your mind, for your preparation for your testimony in this case in order to familiarize yourself with Cook Inlet?

A Yes, I think so. To try to do it as thoroughly as possible and at the risk of appearing immodest, I think I am quite prepared to take a ship right up Cook Inlet without a pilot and put it alongside the pier out here.

* * * *

[464] Q Professor Strohl, based upon your preparation described above, have you formed an opinion as to whether or not Cook Inlet from the standpoint of a mariner, a navigator, is a body of water which is necessarily inland?

A Yes.

Q What is your opinion?

* * * *

[465] A My opinion, sir, is that Cook Inlet—as a body of water, Cook Inlet rates as a body of water necessarily inland.

Q From the standpoint—

A From the standpoint of navigating and navigating experience, yes.

Q All right, Professor, would you state what the reasons are for your opinion?

A I think, sir, that these fall into about six categories: The configuration of the shore; secondly, the concept of a landlocked body; third, the matter of entry, then the category of tides; fifth, this would be the weather, and finally, the navigation aids, I think about in that order.

Q All right, Professor, let's take them one at a time, then. State the reasons for your opinion based upon the shore configuration of Cook Inlet.

A Well, the shore configuration dictates all in that it's a rather elongated body, some 140 miles long, with varying widths, quite a good bit longer than it is wide,

rather regular, and a good bit of the eastern shore indented with one bay, Kachemak Bay and several smaller ones like Turnagain Arm. Well, Turnagain Arm is not so small. And then on the western shore the shoreline is rather more indented, somewhat more irregular. And they open out into two entries, primarily [466] two entries for navigation purposes, and the distinct sort of barrier at the bottom. That is the general picture of the shore.

Q What are the two entries to which you refer?

A One entry is—comes up through Shelikof Strait, and the other is really divided in—subdivided into two other entries, or possibly three. The third one from a navigation standpoint is pretty risky. That is Chugach Passage. The other is a pair of passages to the north and to the south of the Barrens. Perhaps it is relevant to point out in this connection that from a navigator's standpoint, the picture is quite a good bit different from simply looking at lines on a chart, because actually, the amount of navigating clear water in any of these passages is substantially less than one would look at when one looks at blue water on a map. In other words, it is about—there is about 38 miles of clear water and this is divided down pretty rapidly, 18 through Shelikof Strait and eight to the north of the Barrens, and about 12 to the south of the Barrens. We will rule out Chugach. That is all right for small boats.

Q All right, Professor, getting to the point of—you mentioned the concept of being landlocked. State the basis for your opinion in that area.

A Well, here again, I think I'd like to refer to this in a mariner's conceptual terms. First is the matter of entry. [467] You go into it. You have the conception that you must navigate by aids around you rather than by celestial navigation. You look out on all sides and you see land there.

Then, secondly, there is the matter of shelter which rises rather promptly in ones mind for navigating purposes, and then thirdly, which is often forgotten, except those who do navigating, and that is that the landlock imposes the problem of getting out, especially if sufficiently bad weather arises. You have doubt about holding ground. You have to get out in a hurry. This landlocked matter arises and plays quite considerable importance.

Q How do you apply this concept, specifically to Cook Inlet?

A In the case of Cook Inlet there is no doubt in my mind that first there is the matter of entry, how do you get into it? There is the anticipation of some shelter. It gets to be rather more important if one is with naval ships, I think, and decidedly the problem of making up your mind in light of the weather how you are going to get out of that place if you have to get out.

Q All right. Now, discussing specifically the entrance of Cook Inlet, you indicated that there may have been a problem, or a problem arises. Could you describe that as in the way it formed the basis for your opinion?

A Yes. Actually, the principle navigation entrance, as I see it occurs on either side of the Barrens, and there is a somewhat [468] lengthy process that—almost a check-off process one goes through in formulating what he is going to do at that kind of entrance. The sailing directions will immediately tell you that certain risks are involved because of tidal currents. In anticipation of weather changes and shelter, and in anticipation of the tidal currents which occur right there, and especially tide rips and eddies, and then looking again at the chart and seeing it, where the depth of water changes, I might add that the fifty fathom curve is right in a curved line going just about from Cape Douglas to Cape Elizabeth, one formulates—as a navigator, one formulates a mental picture of crossing a barrier, and that is especially what seems to happen, and in—I might add, in connection with the matter of weather and shelter, I was—had the good fortune—nobody else looked at it as good fortune—in going on the Tustamina on a rather bad day going and coming, and there was a decidedly marked difference in the water conditions and the weather as one came nearer and crossed over this barrier. You can even tell this as a navigator because the ships work in a different way. The swells are longer

outside; they're shorter inside. In fact, there is very little sea inside. There is a decided barrier down there.

Q You mentioned the tide, Professor. What attributes do you find about the tides that support your opinion?

[469] A Well, tides, in themselves, are important in connection with coming alongside a pier and in connection with where one would like to anchor, and there is quite a substantial diurnal change here over a 24-hour rise and fall. In the vicinity of Anchorage it appears to be about 29 feet. Down at Port Graham near the entrance it is about 14 feet. Now, that is all right, but what is of quite considerable importance as respects navigating inside Cook Inlet is not so much the tide, per se, but the tidal current, and in certain parts of Cook Inlet when there is an ebb or a flood, this can be rather spectacular.

For example, out here alongside this pier, the Port of Anchorage, when we came in on the Tustamina there was about three knots of tide going out at the oil derrick. This is really something to catch the eye. There can be about four or five knots out there in the middle of the channel. There is about four knots down in the vicinity of the Barrens. The book says that there is about two knots, and I think, judging from the number of course changes that they had to make on the Tustamina to compensate for tidal current, two knots was pretty conservative. I think it was more like three.

The tidal current, for purposes of interior navigation, are really probably—well, they're much more important than the tide itself. That is, the rise and fall of the tides.

Q Were these tidal currents apparent to you outside of the [470] Barren Island area?

A No, because the whole matter dissipates outside. You see, there is a funnel effect inside Cook Inlet. It channels the tide.

Q All right, you discussed the concept of aids to navigation. What, in that respect, supported your opinion?

A Well, first, if one hypothesizes that he is entering Cook Inlet, he is looking for initial aids to navigation to channel his way in. These occur on either side of the

entrance of the Barrens and on the Barrens, themselves. Then, in addition, about 15 miles eastward of the Barrens is the first sort of navigational aid pick-up point, and that is a lighted buoy. Then, of course, these get to be quite important for fixing the ship's position when that is related to the currents inside. There are a number of navigation aids inside Cook Inlet. My feeling is that they're just about adequate for the amount of traffic. Now, these, again, are for purposes of fixing the ship's position. They're quite necessary, I might add, in Cook Inlet.

Q Who has placed the navigation aids in Cook Inlet?

A Currently, that is the responsibility of the United States Coast Guard.

Q You mentioned, Professor, the weather. Did you have any reasons for your opinion based on the weather other than what you have described now?

[471] A Yes. There are—actually, when I talk about the weather, I am talking primarily about winds.

THE COURT: Excuse me. About what?

THE WITNESS: Winds.

THE COURT: Winds, okay.

THE WITNESS: From my reading of Cook Inlet, and I found this by experience, the winds inside are relatively mild with two funnel-like exceptions, and that is a sort of venturi effect coming out of Turnagain Arm and another one coming out of Kachemak, but they dissipate into the inlet. But, as soon as one passes this barrier that I was talking about before, and fortunately, again I was out there when the winds became very, very strong, indeed, and it can be—I think we were experiencing about 30 knots of wind outside, which we weren't experiencing inside.

* * * *

[474] WILLIAM RAYMOND HUNT

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Where do you live, sir?
A Fairbanks, Alaska.
Q By whom are you presently employed?
A The University of Alaska.
Q What is your position with the University of Alaska?
A I am an associate professor of history there, and the head of the history department.
Q Now, at the request of the State of Alaska, and without at this point going into detail, have you made certain studies relative to Cook Inlet?
A Yes, I have, sir.
[475] Q I want to ask you now some questions as to your qualifications to make those studies and draw conclusions therefrom. First, will you tell the Court briefly your formal educational background?
A I graduated from Seattle University in 1951 with a bachelor of social science degree, majors in business administration and literature. I graduated from the University of Washington Law School in 1958 with an LLB which has since been upgrated to a JAD. I graduated from—with a master of arts degree in history from the University of Washington in 1956. I took my Ph.D. in 1967 from the University of Washington in history.
Q Did any of your theses or dissertations deal with the matter of the Northwest or Alaska?
A My thesis was entitled, "Changing Ideas about the Cartography of the Northwest Coast."
Q Now, Dr. Hunt, give us briefly your past employment background, particularly insofar as that background is relevant to history or to being a historian.
A I taught history and geography in secondary schools of Seattle from 1959 until 1967. In 1967 I came to the University of Alaska where I have since been teaching courses relating to the north, and became head of the history department and associate professor last year.

Q In your present position as head of the history department, I [476] suppose you have divided duties or responsibilities, and in that regard I want to ask, do you presently engage in research, historical research?
A Yes, sir, I do.
Q Would you estimate for us the percentage of time you devote to historical research?
A Perhaps 50 per cent of my time.
Q The other is related to administering the department and teaching?
A Yes, sir.
Q Are you the author of any historical publications?
A Yes, sir, some 30 publications, most of which are concerned with the history of the North Pacific and the Arctic.
Q I see. To what professional societies do you belong, Dr. Hunt?
A I belong to the Alaska Historical Society. I belong to the Society for the History of Discoveries. Also, the Hakluyt Society which is concerned primarily with discovery and exploration, and the American Historical Association.
Q How long, roughly, have you engaged in historical research?
A Well, professionally, since the mid-fifties. As a history buff, for as long as I could read.
Q I'm sorry, I didn't hear you.
A As a history buff, I said, as long as I could read.
Q I see. Are you familiar and trained in the customary procedures and techniques used by professional historians?
[477] A Yes, sir.
Q Could you describe briefly for the Court what those traditional procedures and techniques are?
A Very similar to those you would be familiar with as a lawyer.
Precedence and does intense investigation of sources of materials he can find. The most important thing, of course, is to find that source material, that document, whether it be a graphic document or a Will or testiment or a personal narrative which describes an event.

Q All right, sir, will you now tell us generally what studies you have made of Cook Inlet?

THE COURT: Counsel, may I suggest with an expert witness I think it's better procedure when in your mind you have completed the qualifications of a witness that you move the Court to accept the witness as an expert in X field or whatever it is you feel you qualified him in so that the record is clear as to exactly what his expertise is in your mind and how he is received by the Court.

MR. PHILLIPS: Yes, thank you, your Honor, for that, and I move at this time that he be admitted as an expert in cartographic history, and particularly that of Cook Inlet.

THE COURT: Did you wish to respond?

MR. CHARNEY: We think that we do not object to his qualifications as a cartographic historian. The questions on cross will go to the—more to the weight of his testimony.

[478] THE COURT: The record may so show you have now been qualified in the field that you named.

MR. PHILLIPS: I have a few more questions. May I pursue those for just a moment?

BY MR. PHILLIPS:

Q Now, Dr. Hunt, tell us the studies you have made of Cook Inlet. I mean at this point to tell us about them generally.

A I thought the best in preparation—

THE COURT: Excuse me. This room is large, and like most courtrooms, it's been designed without accoustics in mind, so would you speak up? I think they're having difficulty hearing you, and I am, too.

THE WITNESS: I'm sorry. I began by considering the knowledge of the North Pacific prior to the discovery period in the 1740's, because I think it's important to know what the explorers were looking for, and I have tried to look at every map as well as every supporting written document, published document concerned with the history of the exploration, discovery exploration and development

of the Cook Inlet Region, especially as expressed in the cartographic evidence.

BY MR. PHILLIPS:

Q Over what period of time, and where did you undertake this research?

A I began particularly—particular investigation for the purpose of this case, in March of last year and initially made [479] my investigations in the resources of the University of Alaska archives and the library. Later, I went to the National Archives, went to the Stevenson Collection of Dartmouth College in New Hampshire, went to the New York Public Library, went to the Harvard University Library, and also the Library—the extensive holdings of the University of Washington Library.

Q Now, finally, before we come to your conclusions or opinions, and by the way, I suppose of further questioning, I would like for you to tell the Court if you can what significance is there to the cartographic history of Cook Inlet or any particular region, for that matter?

A Well, for the historian, sir, the cartographic material is a document, a historical document which records the current state of knowledge about the area, the current state of understanding of its importance, what is happening there. It is as much a document for a historian as any other piece of material would be.

Q I see. Did you arrive at certain conclusions or opinions as a result of this research?

A Yes, sir, I did.

Q Now, based on your training, experience, and those studies, do you have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those people who have inhabited its shores?

[480] A Yes, sir, I have.

Q What is that opinion?

• • • •

[482] THE WITNESS: Sir, my opinion is that there has been a historical exercise of control over Cook Inlet and its shores.

BY MR. PHILLIPS:

Q Do you have an opinion, based upon your training, experience and studies, as to whether from a historical standpoint there has been such continuity of exercise of authority as to have developed into a usage?

A Yes.

• • • •

[483] Q What is that opinion, sir?

A I believe there has been such a continued exercise of authority as to have ripened into a usage.

Q All right, sir, do you have an opinion, based upon your training, experience, and these studies, as to whether from a historical standpoint Cook Inlet has been vital to the interests of those who have inhabited its shores?

• • • •

[484] THE WITNESS: Yes, sir.

BY MR. PHILLIPS:

Q What is that opinion, sir?

A My opinion is that the Cook Inlet region has been vital to the interests of the Alaska region.

Q All right. Now, Dr. Hunt, I want you to explain to this court in detail the facts and reasons, how you have arrived at these conclusions. Will you do so?

A May I refer to my exhibits?

Q If you please, sir, and when you do so, Dr. Hunt, it would be helpful, if I may suggest this with the Court's approval, to refer to these various charts by their exhibit number. I believe you placed the same exhibit numbers on these charts—

A Yes, sir.

Q —as of other charts, copies of which are in evidence; is that correct, sir?

A That is right, sir.

Q All right. Now, one or two preliminary questions. These charts are original charts in the main or in the whole?

A No, those that I was able to acquire from my own collection and the University of Alaska collection are originals. Others are photocopies.

Q I see. Who owns these maps?

[485] A Well, the first one you see there, I own, and several others, specifically five of them, are owned by the University of Alaska Library.

Q All right. Now, with this explanation, will you proceed to give your reasons for these conclusions, using these charts and referring to them by exhibit number as you have indicated?

• • • •

A For purposes of my study of the historical cartography of Cook Inlet, I thought it best to go back to the period of time preceding the actual discovery of Cook Inlet, because I think it's very significant throughout the period of discovery and subsequently that those navigators who sought out and navigated into Cook Inlet were looking at Cook Inlet and they were looking for something else as well. They were [486] looking for a legendary, as it turned out to be, passageway that would bring ships across continent, across the top of North America, and so provide for the English in particular, who had been denied the opportunities of the Spanish and Portugese, of a quick, short, controlled way to the east. This would provide the English with a trunk to the English and Portugese hegemony over Asia and enable them to compete more effectively.

So, I began to look at maps and the first exhibit here is GI, a map published in Amsterdam in 1709, which shows one version of the state of the knowledge at that time, in 1709, is representative of the knowledge of the early 18th century, and also its preceding 17th and 16th centuries as well. You will notice that western North America was not very well known in 1709. California is shown as an island.

In the North Pacific where we would expect to find Alaska, we find a vacuum on the maps, dots, in other ways depending upon the tendency of the cartographer. Very often the cartographer would put the title cartouche there to cover his embarrassment that he doesn't really know what is there, but we see here a little land called "Ami" and one of the many names used for what cartog-

raphers who had the best scientific information available at the time used for land masses that may have existed in the North Pacific.

Now, the importance of the existence of this land, and [487] the importance of the uncertainty about the actual geography of this region was not related initially to the resources of the region itself. The Spanish, for example, out of hand, claimed sovereignty over all Pacific lands. They, of course, had established their control over Spanish America.

• • • •

Q Which of those maps and charts that you have on the board there relate themselves to background or to the early days?

A The first two.

Q Those being exhibit what?

A Second exhibit is GJ.

Q So, and would you put that aside for the moment?

A Yes.

Q Now, you have on the other stand what exhibit, sir?

A Exhibit GK.

Q Would you tell the Court what that exhibit reflects?

[488] A It reflects the first cartographic representation of what it was Bering, on his historic voyage in 1741 was supposed to have discovered of Alaska. The importance of it to me, if I may—

Q If you will, please.

A —say something is that it shows that Bering and the Russians weren't really all that clear about what they discovered and it showed the persistence of a belief in the region of Cook Inlet that there was the entry or the exit for the northwest passage that would provide the short way to the Indies by way of northern Europe.

Q Was there at that time a name given to this region which we now know as Cook Inlet?

A Not at this time, no.

Q All right, sir, do you find anything else significant on this chart?

A Only that the area which we know today as the Northwest, the lower northwest Washington-Oregon, is represented by a body of water, a huge body of water which, of course, never existed, indicating that although there was some difficulty in knowing at first what the discoveries of Bering had proved, there was a good deal more difficulty about the geographical conception of the rest of the American west which, of course, up to that time had not been explored.

Q All right, will you go to the next exhibit, please, and this [489] exhibit is what?

A Exhibit GL, the lower portion here.

Q And what significance, if any, do you find on that chart?

A Well, the significance of the activities represented on this chart, of course, have to do with the hotel that I am staying in. This is the draftsman's conception of the survey made of Cook Inlet in 1778 by Captain James Cook, and of course, it represents the first accurate, or reasonably accurate, survey of the waters of Cook Inlet, and it represents the first recorded intrusion. There may have been others earlier, but the first recorded intrusion of anybody of a western nation to Cook Inlet.

Q Was it at that time that Cook Inlet was named?

A Cook Inlet was not named by Cook. It was named by Vancouver subsequently for Cook. He, himself, searched it carefully, because he considered it a potential northwest passageway. He thought of it as a river. He tasted the water, found it not so brackish. He looked at the—

• • • •

THE WITNESS: He used the best scientific aids he had with him, and I should point out not just because I am on Cook Inlet and a fan, but James Cook is generally recognized as the greatest navigator of all time, but he was mistaken in one sense. [490] When he referred to this as a river, he was sure it was a river because of this tasting, because of the configuration of the shoreline, because of the debris in the matter, the merkiness of the water. He sent small boats up into Knik and investigated a little bit in Turnagain Arm;

not important, but interesting, I think, that Captain Bligh headed the boat party that investigated Knik inlet there, and of course, Captain Bligh later became famous for the Bounty mutiny.

But, he took possession of this area in the manner customary at that time. He landed a small boat at Possession Point. Some of his men went ashore. They raised the flag, turned some turf, had three Indians as witnesses to the event, all of them, including the Indians, had a drink of porter to celebrate this.

BY MR. PHILLIPS:

Q A drink of what?

A Porter, to celebrate this exercise of sovereignty over the inlet and the land adjacent to it. Subsequent to this, more investigation was made, of course.

Q All right, sir, does that complete your telling the Court what is indicative about this Exhibit GL?

A Yes, sir.

Q And what is the next exhibit?

A The next two exhibits, GM and GN, represent voyages of Captains Portlock and Dixon, who sailed in company. Soon after the return of Captain Cook's ships to England, and of [491] course, because when Captain Cook and his men encountered the natives of Cook Inlet, they discovered that they were very wealthy, wealthy not only in the resources of the land, but the resources of the sea, and also wealthy in having in their possession in the form of "harrow" the most valuable fur, I guess, that has ever hit the market that of the sea otter, which of course, they took from Cook Inlet. Cook's sailors did a little bit of trading there, incidentally. They were amazed to find that the natives of Cook Inlet had Russian trading beads which indicated an earlier European contact, either directly or indirectly.

* * * *

Q These two exhibits, Exhibits GN and GM, what else do they reflect of significance to you as a historian?

A In this particular, the landing of the English fur traders who came in response to the valuable discoveries

in this region with the opening of the fur trade, this is where it all [492] began, with Cook. These were the businessmen, the entrepreneurs who hauled it up, but the interesting thing to me, by the time they arrived at the tip of the Kenai Peninsula, the Russians who, of course, had been active in the waters of the North Pacific and lands of the North Pacific—

* * * *

THE WITNESS: I will get to the point at once here. The most significant single event, to me, was that the Russians indicated their presence and their assumptions of sovereignty over the area by firing a cannon which was shot past the bow of Portlock's ship. Later, they got together and divided up—

BY MR. PHILLIPS:

Q Now, let's go to the next exhibit. We come now, do we not, to Exhibits GO and GP?

A Yes, sir.

Q Will you tell the Court what significance you find with regard to these charts?

A The overall significance to me is that they represent the [493] activities of English traders and English Royal Navy explorers. In the case of George Vancouver's chart here, this is the chart of John Meares, another trader like Portlock and Dixon, but the significance to me overall is that these represent the international rivalry that almost precipitated a world war over the question of dominion of this area. It is known historically as the Nitka Sound Controversy. It was resolved without war for reasons that we don't need to go into here, but the major point is that Spain claimed all lands on the Pacific. English initiative—

* * * *

[494] THE WITNESS: To return, the most significant thing represented here is the international rivalry over the question of who owns—who exercises authority, dominion or sovereignty over the land of the North Pacific. The Spanish thought they did, although they had done little to—in the way of knowing—in the way of

settlements and development. However, they did in 1779, after hearing about the Russian interest in the area, they sent a captain to Kenai, the tip of the Kenai Peninsula, and he exercised legally what he could do in the way of an expression of sovereignty over this area by going through the standard formula of claiming all these lands for the Spanish king. This was in 1779, so these represent then a conflict among the Russians, the Spanish and the English over the dominion of these lands, a conflict that led to the seizure of Mearse's ship.

Incidentally, Cook Inlet is shown here, also interesting, on Mearse's map, Exhibit GO, as Mearse's conception of the geography of Cook Inlet, he has the following, a line to Slave Lake, and then a river and a lake system, that brings Cook Inlet out to Hudson Bay. Once again, it is persistent of the legendary Northwest Passage.

At any rate, George Vancouver was sent out from England to meet the Spanish to discuss with them this conflicting claim. The Russians, of course, were not brought into it. They weren't arguing. They were there. They had by this time established trading posts on Cook Inlet. Their headquarters were on Kodiak [495] which served Cook Inlet and their vessels were often in the waters of Cook Inlet. But, Vancouver came, did his negotiating with the Spanish. Both nations agreed ultimately that neither would claim hegemony over the area. Cook—Vancouver, who was the midshipman with Cook, incidentally, made the most meticulous survey to that time of the waters of Cook Inlet. He spent a month here.

BY MR. PHILLIPS:

Q Is that reflected in Exhibit GP?

A GP, which shows his soundings, his track of his course and his discovery that more intense investigation, that indeed Cook's River was not a river, but an inlet, and he was responsible for naming the water Cook Inlet.

Q When was that, sir?

A This was in 1794.

Q How, Dr. Hunt, would the accuracy of the charting of Cook Inlet at that time compare, say, with the

accuracy of the charting of other areas of the North American continent?

A Well, taking it back to Cook's survey in 1778, this was a decisive year in the history of the United States when George Washington and his troops spent a memorable winter at Valley Forge, no American had crossed the North American—what we know as the United States. Lewis and Clark made their expedition in 1805, so obviously, prior to 1805 nothing was known of the northwest, the lower northwest, so that it's fair to say that this waterway was internationa"y known prior [496] to any knowledge of the northwest, and much used.

Q Does this complete your summarization of these two exhibits, GO and GP?

A Yes. Vancouver, of course, contacted native peoples there and noticed they didn't have their fur robes any more because the Russians had traded them out of them.

Q Now, we come, do we not, to an Exhibit—

A GQ.

Q —GQ, thank you.

A A map published by Faden in 1802, used to illustrate, among other things the, in a sense, comparative end of the rivalry over the question of who was the sovereign power among the Russians, the English and the Americans. By this time, American vessels had joined the Russians in exploiting the sea otter wealth of Cook Inlet and other waters of the North Pacific. The sea otter was by this time near extinction, so that there didn't seem to be in the 19th century prior to the sale of Alaska any dispute any more about the Russian interest or the Russian dominance over this area, but this map of 1802 represents what I referred to just before.

Notice what we have as the state of knowledge about Washington and Oregon and the lower northwest. Virtually no place names, none that have survived. Just a blank. The Rocky Mountains are not shown. The river Yukon is not shown. The Arctic coast is vague, uncertain. Cook Inlet is, of [497] course, having been known by this time very well, is well represented.

Q When was it, Dr. Hunt, that Russia first claimed and claimed successfully, the sovereignty over Alaska?

* * * *

THE WITNESS: Sir, I—it is a little difficult to answer. The American ships, for example, which were—which penetrated the waters of the North Pacific and Cook Inlet in time did so on the sufferance of the Czar's government. There were no shots exchanged. They discussed and so on—in fact, the Russians relied upon American traders to serve Kodiak and Sitka, but with the understanding that their activity in the North Pacific was at the sufferance of the Czar.

BY MR. PHILLIPS:

Q Yes, sir.

[498] A But as to formal ukases and so on, I can't speak.

Q All right, sir, will you proceed, then, to the next exhibit, Dr. Hunt?

A Yes, sir. This is Exhibit GR, a map published in 1811 by John Carry, a map of the world. It shows the tracks of Vancouver into Cook Inlet. It shows the state of the knowledge in 1811. As just kind of fun, there was a great lake in the interior of America and a great indication of the dog nation which resided there. All this is legendary geography. We know a little bit now about the mouth of the Columbia River because Lewis and Clark have reached there.

The first settlement in this northwest region was in 1811. By comparison, the first settlement of the Russians on Cook Inlet was in 1790. This was abandoned after a time, but again, we see—we look for the river Yukon, the third largest North American river. We don't find it. We don't find the Kuskokwim. We don't find any understanding of the Arctic shore. It represents a comparison of the state of the art of historical cartography at that time.

Q Now, the next exhibit, GS?

A GS.

Q What is significant about that, sir?

A The same kind of thing. Looking for comparative reasons of the state of the geographic knowledge at the time, Cook Inlet showing as ever its well-known presence because of the interest [499] there and so on. Arctic, unknown. No Yukon River. A little bit of understanding now of the true placement of the Rocky Mountains. A development of the knowledge of the geography of the west because of the expansion of American interest in the west subsequent to Lewis and Clark.

Q Do the historical documents, Dr. Hunt, show how many Russian settlements at that time were in Cook Inlet, or are they shown on later exhibits?

A Yes, sir, they are there, shown every time. We have a place name here, a map large enough to show it. We will come to those.

Q All right, there are other exhibits that demonstrate that?

A Yes.

Q And now we come, if you please, to Exhibit HB, and what is significantly shown on that chart, Dr. Hunt?

A The entire area of Alaska is named as a Russian possession. It is 1837 now, so that a knowledge of other territories is much better displayed here. We still have to wonder where the Yukon River—I keep referring to the Yukon, of course, because it is the most prominent waterway in the entire region except for Cook Inlet. It's called the River Norman here in the lower course of it, but no indication of where it originated or its tremendous size.

Q All right, sir, let's go to Exhibit GW. What is shown there, sir?

[500] A A map of—a map published in 1855 showing the British, Russian and Danish possessions in America, Russian possession indicated in Alaska and Cook Inlet by the green confusion. Finally, we have the River Yukon, but a broken line to indicate that the cartographer didn't know whether Yukon found its source by joining with the Colville emptying into the Arctic, or whether it did, as in fact it does, flow to Norton Sound.

Q Does this show the increasing Russian dominance in the area of Cook Inlet?

A Well, the Russian activity was continuous from the mid 18th century, and actually, I think I am a little bit out of sequence here, I see here the exhibits that are Russian. Now, I think we can dispense with this one.

Q All right. Now, we have come—we want the record to show Exhibits GU and GV; is that correct?

A Yes, sir.

Q And what do you find significant on these maps?

A The most significant is the fact that in 1826 when Exhibit GU, the map represented by Exhibit GU was drawn, we have a very close Russian—look, you have to remember that St. Petersburg, the capitol of Russia, was some 7,000 miles from the waters of Cook Inlet, but enough concern about the importance of mapping and charting, it was the waters of Alaska, including Cook Inlet, because of the economic activity there, to [501] draw a special, a particular atlas of the waters of the region, a greater one a few years later, 1859 Tebenkof—it may have even been done in Sitka by real draftsmen, but notice the detail here permits us not only to discover the places of settlement where the posts existed, but a careful delineation of the soundings of the waters because navigators used these. They were not—these were not objects you hung on your wall for—

* * * *

Q Let me re-word it. What, from a historical standpoint was the state of activities in the Cook Inlet area at that time, and I am referring to the time that is reflected on Exhibit GV. You will have to tell us what time, again.

A I think I said 1852 is the proper date. Well, the existence of trading posts on both sides of Cook Inlet indicate a good deal of economic activity. We don't have a lot of records. We can't consult statistics to show how many ships in such-and-such a year, but the existence of what at that time four—at least four trading posts on the shores of Cook Inlet indicate the kind of activity, sea otter activity in particular, [502] that was going on. They also indicate that, as does the existence of the trails leading from Cook Inlet to other regions, Cooper River, for example, Cooper River is some 300 miles from Cook Inlet, but the Indians of Cooper River had no closer central place to trade with the Russians than Cook Inlet, so the historic trail was established. Their trails across the Alaska Peninsula, across Iliamna and so on, this was the focal point in south central Alaska for the Russian trading activity.

Q Cook Inlet?

A Yes, sir.

Q All right, sir, shall we go to these other exhibits? The next one is GY; the next one is GX. What is significant about that?

A The significance of the exhibit is that it's the first chart of Cook Inlet published after the acquisition of the territory by the United States. You all know, I am sure, the history of discussion of whether or not people at the time thought it was a good thing to buy Alaska from the Russians and so on. The Russian-American Company had folded up because in Cook Inlet and elsewhere they had depleted the resources, the marine resources, the sea otter in particular, upon which their trade depended. They didn't find it worth while to maintain themselves. They were afraid of foreign aggressions taking that away from them, so they took the [503] chance to sell the territory to the United States.

And we think in Cook Inlet they got a pretty good bargain. From that time—we are now in the—excuse me.

Q Yes, let me try to bring you forward. We now come to Exhibits GY, GZ and GA, which for purposes of display here, you have put together, do you not?

A Yes.

Q And would you tell us about those, please?

A With the American interest in Alaska, we have an increased demand by Americans that very meticulous and careful surveys be made of all of the waters so that the traders and other voyagers are not inconvenienced in any way, and I have only used the first U.S. Coastal Survey documents here, 1868 and one of 1886, and I think 1899, as representative of the gaining of knowledge as represented by the charts of the U.S. Coastal Survey of

the area more detailed each time. I could have showed 20 different surveys for this period of time, from the acquisition to the end of the century.

Q What difference, or what relevance is there? What matters is that as you proceed in time, these maps show more and more detail on them with reference to Cook Inlet?

A It means usage and it means—usage means a demand for knowledge to safeguard navigation.

Q Now, we come, Dr. Hunt, to Exhibit HE and H—I'm sorry, Mr. Reporter, HC. What is significant about it?

[504] A It represents the military reconnaissance of Alaska. It represents the intense interest in Alaska that followed the Klondike discoveries. It represents also a geographic interest in this by us. If you are in the American government seeking to permit your citizens to hunt for gold in the interior of Alaska, of finding an American route, and this, of course, is what people demanded, "We don't want to go by way of Skagway and Dawson into the interior of Alaska. Where is our American route to the interior so we don't have to face the Mounties and the customs." So, the United States geographers, both military and Geological Survey, looked at the map, looked at Cook Inlet which is the obvious penetration of the Alaska subcontinent, and it shows the Cook Inlet area as the region from which it made its investigations of the possible establishment of an American route to the interior of Alaska, and this is represented in Exhibit HC.

The investigations shown here with those from the top of the Cook Inlet into the Tanana Valley by Captain Glenn.

Q What date was that, sir?

A 1898. Similar in this exhibit—well, both exhibits here, HD and HE, show the interest of the most responsible government agency as far as geographic knowledge and resources knowledge is concerned. In Cook Inlet, this was the United States Geological Survey. Notice this huge area here which was tentatively investigated and mapped

by the Geological [505] Survey. Notice, too, it's shown better here, but notice that the entry to this investigation not only of the interior but Seward Peninsula and Kuskokwim region was begun from an obvious starting point, the entry of Cook Inlet, the top of the Cook Inlet.

Q Now, we come to HF. What, if anything, is significant about it?

A This was—this is the reproduction of the present United States Coast and Geodetic Survey. I have another one behind that. This shows the northern Cook Inlet and the other one shows the upper—but all of these numbers and the dates which are in brackets below the numbers represent the particular numbered survey of a particular part of Cook Inlet and the date the survey was made. Now, this was done for me by the people in Washington at the United States Coastal Geodetic Survey, but the thing is that is impressive to me in this—

MR. CHARNEY: I object to this testimony as hearsay.

THE COURT: It is overruled.

THE WITNESS: —impressive to me about this is that the waters of Cook Inlet have had the attention of the vessels and the officials of the Geodetic Survey to the extent of their having compiled 79 distinct separate surveys from 1905 to the present. To me, this means that there must be some action there.

[506] BY MR. PHILLIPS:

Q Now, wait just a minute. Before we leave this, and to make sure the record is clear here, HF is of what part of Cook Inlet?

A This is the lower Cook Inlet.

Q Which is referred to, I believe, on the exhibit as the southern part?

A Yes.

Q And this area in the middle here, I take it, is the water.

A Yes, sir.

Q And these lines represent the shore, of course.

A Yes, sir.

Q And while my eyes are perhaps not too good, I don't recognize just where we are here, what various land parts of Cook Inlet are shown.

A This is the Kenai Peninsula. Of course, the Alaska Peninsula here, Iliamna. We have Kamishak Bay here and—

Q And do I understand each of these numbers is representative of a survey conducted by the United States Government?

A At a particular date, yes. The date is given.

Q So, without going into detail, you could count the surveys as of this time and show the dates of each one?

A Yes, sir.

MR. CHARNEY: I object to this as hearsay.

THE COURT: Overruled.

[507] THE WITNESS: This is the northern Cook Inlet and it is companion to the one we were just looking at, again showing the specific surveys.

BY MR. PHILLIPS:

Q Wait just a minute. You are getting ahead of me. That is what exhibit number?

A HG.

Q And that is the counterpart of the southern part?

A Yes, sir.

Q That is, HG shows the northern part?

A Yes, sir.

Q And are the numbers there representative of the number of times our federal government has surveyed this land—this body of water?

A Yes, sir, 79 times.

Q And what does Exhibit HH show?

A It's the concluding exhibit here, and it illustrates the survey made for a railroad in 1909 from Cook Inlet to the Yukon, an aborted project, a ghost railroad, if you will, one that was not built, but it indicates to me that to the railroad builders who conceived of the idea of reaching the Yukon and the interior, they considered Cook Inlet the obvious entry place. I didn't show a map here of the actual route of the Alaska Railroad which,

of course, does penetrate into the interior of Alaska, our only railroad, by way of the [508] Kenai Peninsula.

Q What does HH show with reference to Cook Inlet?

A It shows Cook Inlet as the terminal point of a proposed railway that would reach the Yukon.

• • • •

[520] ROBERT N. DeARMOND

being first duly sworn upon oath, testified as follows:

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DIRECT EXAMINATION

BY MR. CRANSTON:

Q Dr. DeArmond, what is your address?

A 42 Calhoun Avenue, Juneau.

Q What is your occupation?

A I have two occupations. One is editor of the Alaska Journal, a quarterly magazine of Alaska history and arts, and I am also employed by the State of Alaska in the State Library as a researcher in the historical library division.

Q How long have you been editor of the Alaska Journal?

A Since it was founded just over a year ago.

Q And could you tell us a little bit about what that journal is? What is the type of material published in that journal?

A Principally historical materials relating to Alaska in both Russian and American periods. Also some material on the arts particularly the native arts of Alaska.

Q And could you tell us about how many people are on the editorial staff of this journal?

[521] A Three.

Q And are you one of those individuals?

A I am one of the three. The other two are concerned principally with the art end of it.

Q What, then, would be your primary responsibility?

A The historical material?

Q Now, you stated you were employed by the State Historic Library in Juneau; is that correct?

A That is correct.

Q And what is your occupation there?

A Researcher is the title, and mostly in historical research questions that come in from not only Alaska, but outside Alaska on Alaska history questions.

Q How long have you had the position of researcher with the State Historical Library?

A About five years.

Q And could you tell about how much time you spend during a day doing this sort of research?

A It varies from day to day, but it amounts to about 20 hours a week.

Q And generally what is the subject matter of your research?

A Well, the whole history of the State of Alaska. We get questions on all subjects, maritime history, mining history, legislative history, almost any variety of subject, because they come from all kinds of people doing all kinds of historical [522] work.

Q All right, in addition to your activities with the State Historical Library, have you done any other work in the subject matter of Alaska history?

A Oh, I have been writing and editing Alaska history, yes, for very nearly 40 years now.

Q And does this—have these activities involved research, historical research?

A Yes.

Q Are you a member of any professional societies?

A Yes, a number of them. The Alaska Historical Society, the Pacific Northwest History Association, the American Association for State and Local History, Western Histroy Association. Possibly others.

Q Have you ever had any positions in these societies as a director or otherwise?

A I was a member of the board of directors of the Alaska Historical Society for three years.

Q Now, you stated you have been engaged in research of Alaska history for approximately 45 years. Can you tell briefly what some of the research projects that you have engaged in during that period of time have been?

A One was a study of the discovery of gold and development of gold mining in the Gastineau Channel area that resulted in the founding of the cities of Juneau and Douglas and their [523] early mining history that was published in book form under the title of "Founding of Juneau." A study of place names in approximately that same area which was published under the title, "Some Names Around Juneau," a study of geographic names. I served as a consultant to the State Department on a special project that produced the Alaska Dictionary of Placenames in 1967. During the period 1953 to '57, I was an administrative assistant and research assistant to the Governor of the Alaska, V. Franklin Selman, and I produced a number of studies, one of which was given an award of merit for state and local history. It was a study of Alaskan legislative procedures to attempt to create the office of a legislative governor in Alaska, and covered a period from 1916 to 1953.

Q You indicated, Mr. DeArmond, that you had published a book concerning the history of Juneau. Do you have any other publications?

A A good many newspaper and magazine articles in the historical field, Alaska Life magazine which was published from about 1935 to 1950. A series of newspaper columns on historical subjects which ran in four daily Alaska papers during the late forties and early 1950's. Publications in Alaska Sportsman's magazine which is now Alaska Magazine and has been in continuous publication since 1935. I have published articles in that since 1937 on an intermittent basis. And for a number [524] of years was editor of that magazine and wrote a section each month on Alaska history titled, "This Month in Alaska History."

Q Now, in this experience with Alaska history, have you determined the sources which should be researched in order to find or determine Alaska history?

A Well, Alaska Historical Library was founded by an act of Congress in 1900 and has probably the largest collection of purely Alaskan materials under any one roof in the United States. It has most of the published material on Alaska. Its manuscripts holdings are rather small. It hasn't been active in the field of gathering manuscript material.

Q Are there any other sources that you consider relevant to research in Alaska history?

A The library, and particularly the manuscript collections of the University of Alaska, they have a much more extensive manuscript collection in various fields, and the National Archives in Washington, D.C. has, of course, large holdings of original materials, ships' logs, reports of army officers, navy officers, reports of various government officials and the branch of the National Archives, the Federal Record Center at Sand Point, a suburb of Seattle, Washington, also has large Alaska holdings of original source material.

MR. CRANSTON: Your Honor, at this time I would submit Mr. DeArmond as an expert in Alaska history and an expert in the research necessary to determine Alaska history.

[525] MR. CHARNEY: No objection.

THE COURT: All right, the Court so declares Mr. DeArmond to be an expert in the subjects named. You may continue.

BY MR. CRANSTON:

Q Now, Mr. DeArmond, for the purposes of your testifying here today, have you made a research study of the Cook Inlet area?

A Yes, I have.

Q And with regard to that study, what were the general subject areas which you researched?

A When I was first asked to undertake this study by the office of the Attorney General in March 1968, I was left pretty much on my own as to what areas to cover. It was a matter of discovery, finding what material was available on the Cook Inlet area. In my

studies, I pretty much narrowed it down to the fields of the fur trade which was the first big business in the Cook Inlet area and had the most records; the fishing industry which came third in point of time, but second in point of importance to the fur trade in the early years, and then surpassed the fur trade in economic importance; the mining industry which started before the fishing industry, but reached its magnitude, and the shipping on Cook Inlet.

Q Now, with regard to the research which you did in the subject what sources did you research? What was the source of your research material? In other words, files locations.

[526] A The Alaska Historical Library in Juneau, first of all, since I was living in Juneau and it was readily accessible and I was most familiar with it, having used that collection for—since 1930. Secondly, the University of Alaska Archives at College in the University Library. I spent a portion of the summer of 1968 there. The National Archives in Washington, and the Library of Congress, principally in the National Archives, and I spent two months there, six weeks in 1968 and two weeks in early 1969. And incidentally, in traveling back and forth to and from Washington, stopped in Seattle at the Federal Records Center and searched that material.

Q Do you consider that the sources which you researched were—those were all the sources necessary to complete the project concerning Cook Inlet?

A They were all that were available to me. I don't read Russian. I would like to have made a trip to Moscow or Leningrad and researched Russian source material, but that wasn't feasible.

Q Over what period of time did you do this research?

A Over a period of approximately two years, starting in March 1968.

Q And ending, I would take it, in 1970; is that correct?

A Right.

Q You have any idea of the number of hours you may have spent on this project?

[527] A Well, I would estimate that it would amount to about six months of 40 hours a week labor, although this wasn't continuous. It was intermittent. Other jobs that I had, other duties intervened so it wasn't a continuous effort.

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Q Now, Mr. DeArmond, I will show you what has been marked for identification as Exhibit HV, which is described as Historic Development of the Cook Inlet Basin. This exhibit consists of a base map with two overlays, and I would ask you just to take a minute, please, and examine this exhibit.

A Yes, I am somewhat familiar with it. I have seen a rough of it before the final preparation.

Q Now, I would ask you if the placement of the symbols on that exhibit which are identified as a red triangle indicating Russian settlements, a green circle indicating trading posts, a blue square indicating settlements, a concentric circle indicating fur farms, an octagon representing maritime boardings, a green line indicating overland routes, a symbol in the form of a can indicating canneries, a symbol in the form of a railroad track indicating a railroad, a symbol in the form of an ax and hammer indicating mining activities, [528] and oil drilling apparatus indicating oil drilling activity.

I would ask you if the placement of those symbols on that map depict graphically the results of the research which you have just described?

A Yes, they do.

Q All right. Now, Mr. DeArmond, we are now looking at the base map which the legend indicates, it is to 1867, and would you describe the activity represented by the symbols on that map, and again the description being based on the historic research which you have just described.

A The four triangles on here represent Russian trading posts founded by Russian companies. The three of them, the lower three here, at least prior to 1799 when the Russian-American Company was founded. The first

two, one at English Bay as it is now known, the other at Kasilof, founded in 1786 by two rival trading companies. And at that time, until 1799, all of the Russian fur trade was in the hands of individuals or very small company of three or four men with one small vessel. The third one at Kenai was founded in 1791 by the same company that founded the one at Kasilof and I was not able in my studies to discover why they founded two so close together. I think that they found that Kasilof was untenable because of the poor harbor and difficulty in entering the rather shallow river there, but I couldn't find any testimony to that effect. All I really know about Kasilof [529] after its founding was that it apparently had been abandoned sometime before 1867 when the Americans took over. This four, this one was known as St. Paul and both its location and its actuality are in some doubt. It was reported by several authorities, but I have found no history of it. It was very close to the present Indian village of Tyonek. It may have been founded and quickly abandoned, or for some other reason, perhaps it never was founded at all, perhaps it was only a plan to found it. The three, English Bay, Kasilof and Kenai—Kenai especially—remained viable communities for some purpose ever since the founding of those posts

Q Now, did your research disclose the reason for the settlement of the Russian posts as you have just described them?

A They were for the purpose of gathering furs produced by the aboriginal inhabitants, which in this area were a mixture of Aleuts and Eskimos, and were—and in the upper inlet here some Amabaskin people.

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[535] Q Mr. DeArmond, could you—you were speaking on the first map on Exhibit HV, and would you please state what time period or the duration of the four Russian settlements which you have been discussing was?

• • • •

[536] THE WITNESS: The most southerly of the settlements marked on this map, Alexandrovski, under

the Russian name, or English Bay as we call it today, was founded in 1786. Kasilof, known to the Russians as Fort St. George, was founded that same year, 1786. The one at Kenai, Fort St. Nicholas, was founded in 1791. The most northerly, Fort St. Paul, I have not been able to [537] establish the date on it or its duration.

English Bay continued until the American occupation after which the site was occupied by American fur companies. Kasilof, Fort St. George, was abandoned some date after its founding and I can't give you that date. I was unable to find it.

Fort St. Nicholas at Kenai was continued in operation until the transfer to the United States of 1867 and was then occupied both as a fur trading post and as an army base or post of the United States Army in 1868.

BY MR. CRANSTON:

Q Now, Mr. DeArmond, could you tell the Court what the historical purpose of these trading posts was; what was their main activity based upon?

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[538] THE WITNESS: These three Russian posts, and perhaps the fourth, were established to participate in the fur trade, and at that time, at the time they have their establishment, that existed almost solely in the sea otter trade. The sea otter was the fur [539] that brought the Russians to Alaska. Sea otters were discovered in Alaska by the Bering expedition in 1741. It was a naval exploration, scientific expedition, and was not looking for furs, but the crew members secured some sea otter furs and started an immediate fur rush to Alaska which began in 1745, and it followed the Aleutian Chain. Landing first at Attu, it followed the Chain down to the Alaska Peninsula, eastward to Cook Inlet in the 1780's.

The sea otter is a marine mammal living practically its whole life in the ocean. It does not come ashore to breed as the fur seal does, but occasionally comes to shore for rest, apparently after storms, but is found—

THE COURT: It is no longer responsive, counsel. Objection is sustained.

MR. CHARNEY: I objected.

BY MR. CRANSTON:

Q Could you indicate, Mr. DeArmond, what the relationship of the sea otter to the trading posts in Cook Inlet was?

A Well, the sea otter were found in all parts of Cook Inlet as far north as approximately Kalgin Island or Kenai, approximately up to here. These were the most northerly sea otter hunters as far as I have been able to learn, but they were under the—all of the most southerly parts of the bay.

Q All right. Now, Mr. DeArmond, we have the first overlay to Exhibit HV which is intended to be representative of the time period 1867 through 1900. Taking each symbol in the order [540] set forth on the legend, would you explain to the Court a brief history relative to those symbols as they are placed? We will start with the trading posts.

A These green dots represent American trading posts that were either taken over from the Russians by an American company or were established after the transfer in 1867. Again, looking geographically, Cape Douglas on the cape of the same name was established by the Alaska Commercial Company. I was unable to find the exact date, but it was at least as early as 1878.

Cape Douglas was a prime sea otter hunting area, the center of a number of villages in this area.

On the west side, the same location as the old Russian fort at English Bay was taken over by the Americans by at least two different American companies successively, first Tittle & Company, and then Alaska Commercial Company. That was based primarily on the sea otter trade. Seldovia, there were also two different companies, the Alaska Commercial Company and the Northwestern Commercial Company—Northern Commercial Company, excuse me, both of which were interested primarily in the fur trade, and to a large extent, in sea otter trade.

This was at Anchor Point. It was a very short-lived station, and I don't know why, it seemed to have lasted only a couple of years in the late 1890's, perhaps it was based [541] on some coal and gold mining that took place there. I am unable to determine that.

On the west side of the inlet at Oliamna was Alaska Commercial Company's station partly for the sea otter trade. The sea otter hunting was carried on along this part of the inlet.

Q You referred to this part of the inlet. Would you indicate—

A The western part off Augustine Island, and also handled some of the largest trade from the inland area, from the Iliamna-Bristol Bay area.

Next, on the north, Kasilof had been a Russian post, abandoned, and the American Alaska Commercial Company established the post there. Kenai was a continuously operated post, first under the Russian flag and under the American until well after the turn of the century. As I stated previously, that was about the northern range of the sea otters, and it also had some other fur trade there with two or three different companies there, Alaska Commercial Company, Shirpshire—

THE COURT: What was it? Say them again.

THE WITNESS: The Alaska Commercial Company, Shirpshire, other companies were stationed at Kenai. Going on up the line, at Tyonek Alaska Commercial Company had a station, and C. D. Ladd, who is also a fisheries operator, established a trading post. Susitna Station was principally based on upland furs drawn from [542] a vast area from the Susitna River. Knik likewise drew most of its furs from the Matanuska Valley clear to the Copper River Valley.

BY MR. CRANSTON:

Q Could you give the approximate time duration of each of these posts?

A Well, Cape Douglas from, as I said, approximately 1878 until 1900 or later. I am not sure exactly. English Bay, which was established by the Russians in 1786 and continued until after 1900 by the Alaska Commercial

Company. Kasilof was abandoned by the Russians, reestablished by the Americans, but not continued for very long. There was a station there in 1893 and it continued at least until 1900. The Iliamna station began operations in 1890 and continued until 1900. Seldovia was established by two different companies, the Alaska Commercial Company in 1894; Tittle & Company in 1871 or '72. Anchor Point, as I said, Alaska Commercial Company was very short-lived, around 1896, '97, '98. Tyonek was established by the Alaska Commercial Company in 1875 and by C. D. Ladd in 1892. Susitna Station was established in 1895 and continued well into the 20th century. Knik Station was established in 1882 or perhaps earlier, sold by the Alaska Commercial Company in 1898, on the west side of the Knik Arm and continued until the building of the Alaska Railroad in 1916 or '17. [543] Q Has your research disclosed the basis upon which these posts were established?

A I don't understand your question.

Q What, generally, was the trading that was engaged in of these posts?

A It was the fur trade, buying and selling goods to fur hunters.

Q And what general type of fur was that?

A Principally the sea otter in the southern part of the inlet from Kalgin Island south. Upland furs such as beaver, martin, fox, mink in the Susitna and Knik upper areas.

Q All right. Now, going to the settlements, could you,—if there is anything to add relative to the settlements that you did not state in your discussion of the trading posts, would you please do so?

A Well, most of the trading posts also had settlements of native peoples, and a few White Russian priests, usually, and a church in addition to the trading post. The exception was Homer which was never a trading post, but was based on mining, some gold mining and some coal mining. Two settlements up here at Sunrise and Hope were based entirely upon the gold rush in the 1890's and they also became trading posts, but had noth-

ing to do with the fur trade, and I think this one is out of our area.

Q By that, you refer to—

A To Seward.

[544] Q All right, I note that there is a symbol for fur farms. Could you describe the location of those and what their historic significance was?

A Well, the raising, principally, of foxes for their furs began in the 1890's in this part of Alaska, first on some of the off-lying islands here just at the entrance to the inlet, and then other establishments at English Bay and at Anchor Point and Homer going up to Kenai. They were raised—mostly black and silver foxes raised for the fur market.

Q All right, the last symbol on the map relative to locations is entitled "Maritime Boardings." Could you tell us what your research has disclosed on that with relation to the symbols on the map?

A Well, there are five shown here. They were in two different groupings. In 1892—in June of 1892 the United States war ship Mohican, which was assigned for that summer to what was known as the Bering Sea Patrol Squad, patrolling the entire coast of Alaska in connection with fur seal hunting and other marine activities, the Mohican steamed into Cook Inlet and sighted a schooner that was hunting sea otter off Cape Douglas. The steamer's log gave a position by latitude and longitude which placed the vessel about 24 miles off Cape Douglas.

Q What was the name of the vessel?

A The schooner was the Kodiak, owned by the Alaska Commercial [545] Company, and she was under Captain Hanson and had a crew of native sea otter hunters with their skin boats engaged in hunting sea otters. The commander of the Mohican, Commander Johnson, I believe his name was, ordered the Kodiak to cease and put a crew abroad and sent her to Sitka for violation of the statutes which prohibited hunting of sea otters by whites.

Q Would you discuss the other symbols on the map?

A The most southerly one was the next vessel over-

hauled and boarded by the Mohican, and she was something of an oddity in the sea otter hunting—fishing. She was a steam cannery tender from Kenai. The cannery there was not operating that summer due to a poor market and in order to employ their steam vessel which otherwise would be idle, they engaged a crew of—or loaded aboard a crew of sea otter hunters from Kenai and took them out with their skin boats, to hunt. They were so engaged when boarded by the Mohican, also seized.

Q What was the name of that vessel?

A The Jenning.

Q And you indicated that to be the most southerly on the exhibit?

A Right. I believe she was about 9 miles off Cape Douglas, something in that area. The Mohican then steamed on to the northward and sighted another vessel named the Lettie and the same procedures. The Lettie was also owned by the [546] Alaska Commercial Company which owned most of these shore-based stations.

Q All right. There are two other symbols indicating maritime boardings. Would you—and just before you get to that, did you determine the date of these three boardings, the Kodiak, Lettie and Jenning?

A June the 6th, 1892.

Q All right. Now, let's take the other two symbols representative of maritime boardings.

A Well, I might say in the first place that the vessels seized here were found not guilty by the court in Sitka because that had some bearing on these other two. In 1893, June 9th, I believe it was, 1893, a revenue cutter entered Cook Inlet on regular patrol, the same type of patrol that the Mohican had engaged in in 1892, and 12 miles off Port Graham sighted a schooner sea otter hunting and boarded her. The name of the schooner was the Mary Anderson, and the captain was named Green. The circumstances were much the same. She had a white captain and native sea otter hunters with their skin boats and presumably, because of the judgment of the case the year before in which that type of operation was found not to be—

MR. CHARNEY: Objection. This witness is now testifying as to opinions of the court and decisions of courts. I don't think this is within—

[547] THE COURT: The Court can take judicial notice of the courts. Mr. Cranston, you may proceed. The objection is sustained.

BY MR. CRANSTON:

Q Mr. DeArmond, would you tell us basically the circumstances of the boarding and the location, and then, of course, we do have the court's decision in Kodiak on which we can rely as to the law.

A The Mary Anderson was boarded and examined and released. She was not held and was not seized. Later that same day, the same revenue cutter boarded another small schooner, the Alder. She was not sea otter hunting and the master of the revenue cutter told him that it would be legal for him to go sea otter hunting and proceeded, according to the log of the revenue cutter, proceeded to pick up a native crew to engage in sea otter hunting.

Q All right. Now, the last line is one that indicates overland routes. Could you give a brief discussion as to the historical significance of the overland routes?

A Well, this, I assume, refers to these.

Q Those green lines with arrows, that is correct.

A Well, this connected to the Knik Station was an overland route that came from at least as far away as the Cooper River for furs, as well as the Matanuska Valley and other areas around the Matanuska. The Susitna River drainage is an immense one that drains from the southern and western [548] slopes of Mt. McKinley, and the furs from there, the people from that area traded at the Susitna station. The Iliamna station was the terminus of a route that went as far as Bristol Bay and was used not only by fur hunters, but the United States courts which went to Bristol Bay for court proceedings. Rather than make the long and rather rough trip through Unimak Pass by boat, the courts often walked from Iliamna across to Bristol Bay. The other

one shows the route of the Alaska Railroad from Seward to approximately Sunrise.

Q I note a route going out east of Turnagain Arm, also. Did you discuss that route?

A That was a route used by the—during the Cook Inlet gold rush to Sunrise and Hope in the 1890's. Miners, prospectors, gold seekers landed at Portage Inlet, the present location of Whittier, and climbed over the glacier and came down along Turnagain Arm to the gold fields. They didn't have, particularly, any winter and early spring in the upper part of Cook Inlet which was still blocked by ice and impassable to vessels.

Q Thank you. Now, we will turn to the last overlay. Now, Mr. DeArmond, the second overlay indicates the time period 1900 through 1959. I would like to ask you to briefly describe the symbols and their location, and with reference to the time period involved. First, are there any new trading posts on this second overlay which you did not discuss [549] in your earlier testimony?

A No, I believe not.

Q All right, are there any new settlements which you did not discuss in your earlier testimony?

A I don't believe so, no.

Q All right, or are there any new fur farms?

A No.

Q All right. Now, generally, then, the new symbols that of canneries, would you briefly describe perhaps the number of canneries and their historical significance?

A There was some area—some of the canneries should have been shown on the previous overlay since the earliest one at Kasilof dates back to 1882, the first cannery established on Cook Inlet, and one of the first two salmon canneries in all of western Alaska was established at Kasilof—Kasilof River in 1882 by a San Francisco Firm, the Arctic Fishing Company. That cannery had a long existence, continued in operation almost continuously until 1923. In 1892 it was taken over by the Alaska Packers Association, one of the very large salmon canning companies on the Pacific Coast, and was operated by them. It was a typical early-day cannery in that the

crews were brought in by sailing ship which also brought all of the supplies and the sailing ship was usually anchored for the summer on the west side of the inlet in a good harbor.

The next established cannery was at Kenai, 12 miles to [550] the north, and that also has been a cannery ever since. That particular cannery did not continue in existence continuously, but there has been a cannery at Kenai most of the time since the 1890's.

The next, the third cannery, was the second one at Kasilof near the original one was built by George W. Hume in 1890. A second cannery was built in 1898 and that has—that site has been used by various companies until the present time.

The fifth cannery in 1900 was at the Chilitna River very near the present village of Tyonek. There are a great many canneries built in the period 1911 through 1913 or '14; English Bay, Seldovia, Ninilchik and Snug Harbor on the west side. There were in all 60 canneries built on Cook Inlet between 1882 and the present date. I don't—I can read them all off, but—

Q I wonder—perhaps it would be helpful if you could describe what the historical significance of these canneries was. What did they use for their resources, and where did the resources come from?

A Well, they were all salmon canneries until very recent years when there's been some processing of crab and other shell fish, but the basis for the industry was salmon which entered Cook Inlet and progressed up the inlet to various spawning streams all the way from almost at the entrance clear up to [551] the head of Knik Arm and the Susitna River. All of the early canneries brought in their primary help and probably half of their fishermen from outside Alaska, usually from San Francisco. The rest employed natives, both for fishermen and cannery hands. They fished on both sides of the inlet from virtually Cape Douglas up to Tyonek, and from Cape Elizabeth up the shore on the east side of the inlet using gill nets, drift nets and traps, set nets. The early ones all used sailing ships, mostly square rigged ships,

which brought up all of their cannery supplies, box chutes for making the cases, and cans were brought up. The crews and the fishing gear were laid up during the summer in some satisfactory anchorage and then in the fall loaded up the pack and crew and sailed back to San Francisco.

Q All right. Now, are there any more—any new symbols on this overlay representative of maritime boardings?

A Yes, there are two additional ones. The most northerly of the symbols marking boardings. Those were in connection with the halibut fishery which was also carried on for many years in Cook Inlet by mostly, in the early years by steamers, small steamers of 100 to 200 tons that carried for the most part 12 to 16 dories. The actual fishing was done with dories, two-man dories. Some of the vessels that fished halibut in Cook Inlet in that manner were the Zapora and Chicago, the Zapora belonging to Booth Fisheries Company, [552] and the Chicago belonging to Booth Fisheries, and the New England, the steamer, belonging to New England Fish Company.

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[553] Q Would you proceed briefly with a description of the two symbols which you were discussing, Mr. DeArmond?

A One of them, and I am not sure which is which, one of the marks is the Zapora and one the Chicago, both of which were fishing halibut in Cook Inlet in 1924.

Q Was that the Chicago, or the New England?

A Or the New England and the Zapora, I'm sorry. One belonged to Booth Fisheries and the other one to New England Fish Company. And in June of that year, I believe I have a date in my notes, the fishery patrol vessel Kittiwake belonging to the United States Bureau of Fisheries, was proceeding from Chisik Island for Seldovia, according to her log a straight course, a log which I examined, when they came upon these two [554] halibut steamers, boarded them and found that they were

fishing without the permit that was required by an executive order establishing the southwest fisheries reserve.

• • • •

THE WITNESS: And the agent aboard the Bureau of Fisheries patrol vessel Kittiwake, a Mr. Scudder, ordered the captains of the two vessels to cease fishing until a permit was received.

BY MR. CRANSTON:

Q All right, and was a subsequent permit received, according to your research?

A I am not sure whether it was received or not. The Commissioner of Fisheries, a Mr. Henry O'Malley in Washington, D.C., sent a telegram to the agent directing that they issue a permit. I found a copy of the telegram. I don't know if one was issued or not.

Q All right. Now, let's go on to mining activities. Could you give a brief description of the mining activity in Cook Inlet?

A The earliest mining activity was coal mining by the Russians. The presence of Coal at Port Graham in the southern part of the inlet was reported, from the earliest known reports, was by Captain Nathaniel Portlock in 1786. Captain Portlock was [555] an English master of a vessel on a trading expedition. The Russians began using coal in the 1840's. They built the first steamship built on the Pacific coast at Sitka about 1840 and—well, they burned some wood. They also found it desirable to have coal and sent a mining engineer over to examine the area for coal. His name was Peter DeRoche. He examined and made a report on the coal prospects at English Bay or at Port Graham, and also did some gold exploring up in the Kenai River area. He spent two or three weeks with a crew of men up there and found some gold, but not enough to make it pay.

Subsequently, a man named Furuhjelm, who was brother of the Russian governor and was a mining engineer, came to Port Graham, put in the machinery and buildings, necessary appertinences for a coal mining operation. The ship carried some coal from California—to San Francisco, but by the time they got in operation, it was not profitable to ship to California. Other sources had been found closer to California, so they continued operating the Port Graham mine only for the use of the Russian steamers. By that time, the Russian-American had a fleet of five or six steamers going along the coast and secured the coal supply from the Port Graham mine. The mine closed down not too long before the transfer in 1867.

Q Let's take the activity, if you would, from 1900 relative to [556] mining with a brief discussion of each of the symbols, if you feel that is appropriate.

Q Well, starting a little earlier than 1900, there was coal mining on a commercial scale on the Homer side of Kachemak Bay. Some of that coal was also shipped to markets in the lower United States, to Washington and so forth. The principle operation there started in 1900, however, with the building of the railroad from the end of Homer Spit to a coal mine up in the upland area here. That mine and the one at Port Graham were both carried on until the building of the Alaska Railroad which supplied coal for the early stages of the Alaska Railroad, and the early city of Anchorage.

After the railroad reached the Matanuska Valley, well, coal became there of better quality and at a lower price.

Other symbols up this coast and over on the Turnagain Arm area indicate gold mining activity which started in the Resurrection River, the Six Mile River in the late 1890's which resulted in a considerable gold rush to Turnagain Arm, the founding of Hope and Sunrise in 1895 and 1896. Virtually all of those miners were carried to the site by small steamboats or sailing vessels at that time.

Q Was there any mining on the west side of the inlet?

A There was a couple of prospects at Iliamna that were carried on, development operations were carried on for a period of about 10 years, I think, not continuously,

but over that [557] length of time, but it did not ever become commercial property.

Q Now, going on to the oil well symbols, could you briefly describe what those represent?

A Well, Oil was first reported, traces of oil, signs of oil, in Russian days, in 1853 and the first oil location was filed about 1890 by a man named Edel F. Kenai over in the Iliamna Bay-Iniskin Bay area, and the drilling rig was—went ashore there sometime around 1900 and some drilling was done, not with any success. There was further oil drilling exploration in the Kenai area north of Kenai in the 1820. There was no—

Q Eighteen, or 1920's?

A Or 1920's, I'm sorry. Oil leasing, oil development was closed for about 10 years from 1910 to 1920 by a proclamation of the President. All oil operations were shutdown. Subsequently, there was off and on exploration at various points near Anchorage and up on the Knik Arm until the final discovery in 1957.

MR. CHARNEY: Objection; 1957, we object on the grounds this is hearsay. 1957, in our minds is not history.

THE COURT: Mr. Cranston?

MR. CRANSTON: Well, I believe that that could include his testimony. I feel that its' simply bringing to completion the oil development of the area to date.

THE COURT: Well, it's obviously, counsel, not history [558] as such. Objection is sustained to the last part of the answer.

MR. CRANSTON: If you would excuse me just a minute, your Honor.

Mr. DeArmond, if you could resume the stand now, please.

At this time, your Honor, I would move the admission into evidence of Exhibit HV.

THE COURT: Is there any objection?

MR. CHARNEY: If it is limited solely to illustrative of the testimony given by the witness, we have no objection.

MR. CRANSTON: Fine, your Honor.

THE COURT: It may then be received and marked.

(Defendant's Exhibit HV received in evidence.)

BY MR. CRANSTON:

Q Now, Mr. DeArmond, taking into consideration the testimony which you have given both last Friday and this morning, I would like to ask you a few more questions. First of all, Mr. DeArmond, do you have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those who claim dominion over the adjacent lands of Alaska?

MR. CHARNEY: I object to this as not within the expertise of a historian.

MR. CRANSTON: Your Honor, I have qualified Mr. DeArmond as a historian and the question is framed in terms of history. It [559] requests or seeks an answer from him based on history and as an expert, I feel that he is well qualified to render an opinion, recognizing, of course, that he may be cross examined by the Plaintiffs concerning that opinion.

THE COURT: Objection is overruled. You may answer. The answer would be just yes or no, whether you have formed an opinion.

THE WITNESS: Yes.

• • • •

A Yes, it is my opinion that there has been a historical occupation and dominion over this area by at least two countries, Russia and the United States, who had claims to it.

Q All right, do you have an opinion as to whether or not there [560] has been a historical continuity of such authorities as to have developed into a usage?

A Yes.

Q And what is your opinion?

• • • •

A I think I have the question. I think that there has been a continuity of this exercise and jurisdiction

that would establish a usage of the Cook Inlet area by these two claimants.

Q All right, Mr. DeArmond, do you have an opinion as to whether or not from a historical standpoint Cook Inlet has been vital to the interests of those who claimed dominion over the adjacent lands of Alaska?

A Yes.

Q And what is your opinion?

MR. CHARNEY: Same objection.

THE COURT: Overruled.

THE WITNESS: It is my opinion that Cook Inlet has been vital to the interests of the claimants and occupants of the adjacent land areas.

* * * *

[571] DONALD M. STEWART

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Mr. Stewart, where do you live, sir?

A Homer, Alaska.

Q How long have you lived in Alaska?

A Since 1965.

Q What is your present occupation?

A I am area management biologist for the Commercial Fisheries Division, Alaska Department of Fish and Game.

Q How long have you held that position, approximately?

A I have had the area biologist job for the past two years.

Q I am going to ask you some questions with regard to some opinions and with respect to some studies, and in that connection, Mr. Stewart, I want to go to your qualifications. And first, may I ask you to tell the Court what is your formal educational background?

A I have a bachelor of science degree from Oregon State University, with a major in fishery science.

Q Now, what has been your working background or experience in [572] dealing with fishing management? Would you outline in that regard for the Court the various positions you have held that had to do with fishery management?

A I started my career with the Department of Fish and Game in 1962 as a fisheries technician. Every salmon season from 1962 through 1965 I worked in the lower Cook Inlet area on pink salmon research. In 1966 I became a research biologist, permanent research biologist with the Department of Fish and Game in the Bristol Bay area, researching sockeye salmon. I worked in that position until 1968 and was promoted to an assistant area management biologist of Cook Inlet. I held that position until 1970 and was promoted to area management biologist that I hold now.

Q Is the field, the general field of fish management, recognized as a specialized field?

A Yes, it is.

Q And how many years in all have you dealt with that field?

A Since 1962, not counting my time at Oregon State University.

Q Can you outline for the Court, and do so, if you will, briefly the nature of the duties you presently have as area management—

A Well, basically, it is my responsibility to manage the fisheries resources of Cook Inlet on a maximum annual sustained basis. In doing this, we use statistics, research from our research sections, and we apply regulations to the fishery to achieve this goal.

[573] MR. PHILLIPS: Your Honor, we submit Mr. Stewart as an expert in the field of fishing management.

MR. BRADLEY: The United States has no objection, your Honor.

THE COURT: He may then be so qualified. You may proceed.

MR. PHILLIPS: Thank you, your Honor.

BY MR. PHILLIPS:

Q First, as to the Department of Fish and Game, could you tell us a bit about that department, its responsibilities, its make-up and where its offices are generally located?

A Well, our main administrative office, of course, is located in Juneau. Our regional office of which I work in is here in Anchorage, and the area field office is located in Homer.

Generally, the duties of my particular position is to manage this fishery on a maximum annual sustained yield, and in doing this, the major tool used is regulating the types of gear, the amount of gear and amount of fishing time allowed.

Q What various statistics does the department keep?

A Oh, various statistics. We compile catch statistics by date, by species of salmon. Also, shellfish. We use applied research and the statistics collected from that research, and in doing this. we establish these regulations that I have discussed for management.

Q Are these statistics kept on a regular basis?

[574] A Yes, they are.

Q Are they kept accurately?

A Yes.

Q Are they published?

A Yes, they are.

Q Are these statistics made available to the public, generally, upon request?

A Yes, they are.

Q In this case, Mr. Stewart, have you made those statistics available to a Dr. George Rogers, an economist?

A I have.

Q Now, at the request of the State of Alaska, have you made any compilation of streams in the Cook Inlet area?

A Yes, I have.

Q Could you tell us what kind of compilation you made?

A I compiled all anadromous or salmon streams [*sic*] entering the Cook Inlet area from the upper reaches of

Knik Arm south to a latitude of Cape Douglas and Gore Point. Three of these streams, the Kenai, Kasilof and Susitna Rivers, have many more tributaries than listed in the compilation. The compilation has totaled 131 streams in this area.

Q Was this compilation reduced to writing?

A Pardon?

Q Was the compilation reduced to writing?

A Yes, it was.

[575] MR. PHILLIPS: May I ask, your Honor, that the Clerk hand to this witness Exhibit IW.

BY MR. PHILLIPS:

Q Does that exhibit which, for the record, is labeled IW, represent the compilation that you made?

A Yes, it does.

Q How did you go about making the compilation? That is, to what sources and in what way did you make that compilation?

A The source used for the compilation was the catalogs of anadromous fish streams.

Q What are anadromous fish streams?

A Salmon streams. In this case, they were compiled by Mr. Gary Reynolds in 1968 for the Department of Fish and Game.

Q Was that compilation done accurately?

A Yes, it was.

MR. PHILLIPS: At this time we move the introduction of Exhibit IW, your Honor.

* * * *

[576] THE COURT: It may be marked.

(Defendant's Exhibit IW received in evidence.)

BY MR. PHILLIPS:

Q This compilation, Exhibit IW, does it show each of the salmon streams by name?

A Yes, it does.

Q I believe it is a stream system, is it not, sir?

A System, right.

Q What do you mean by a stream system?

A Well, it is the system actually entering Cook Inlet that salmon enter into for spawning purposes. However, there are [577] many, many tributaries to these systems entering the Cook Inlet area that salmon utilize for spawning.

Q Yes, and how many of these stream systems are shown in your compilation?

A One hundred thirty-one.

Q And opposite each such stream system, do you show the species of salmon that inhabit that particular system?

A Yes, we do.

Q And that, likewise, is shown on your compilation?

A Yes.

Q Mr. Stewart, are you familiar with the federal regulations; that is to say, the Fish and Wildlife Service regulations?

A Yes.

Q And more particularly, those that were in existence for Cook Inlet for the 10-year period prior to Alaska statehood?

A Yes.

Q Are you likewise familiar with the regulations put out by the State of Alaska since it gained statehood, and particularly with reference to Cook Inlet?

A Yes, I am.

Q In your capacity and position as an expert in the field of fishery management, do you have an opinion as to the reason or rationale for these fishing regulations?

A Yes, I do.

Q Could you tell the Court what that reason or rationale is?

[578] A Well, basically, the reason for the regulations in the Cook Inlet area is to maximize an annual harvest, a surplus harvest of the stocks entering Cook Inlet, and at the same time, assure adequate escapement for species of salmon or shellfish escaping the fishery or a seed or a spawning stock to perpetuate the different species.

• • • •

BY MR. PHILLIPS:

Q Assume for purposes of this question, Mr. Stewart, that there had been in existence no such fishing regulations as those contained in the Fish and Wildlife regulations during the 10-year period prior to Alaska Statehood. Do you have an [579] opinion, based upon your experience, as to what the effect would have been in the Cook Inlet area? This calls for a yes or no answer.

A Yes.

• • • •

[580] Q All right assume that the regulations that were in effect, mainly those of the Fish and Wildlife Service, had regulated the taking of fish only in those areas of water within three miles from the coastline. Do you have an opinion, based upon your experience and studies, as to what the impact on the resources of Cook Inlet would have been?

A Yes, I do.

Q Will you state that opinion?

A Yes. If we had not had regulations governing all of Cook Inlet waters, I feel the effect would have been disasterous upon salmon stocks of the inlet.

Q Now, will you explain that opinion, giving your reasons therefor?

A Well, there are probably three. First of all, there would have been no regulation on the type of gear allowed to be used, or fish species. Second of all, there would have been [581] no regulation on the amount of gear used, and thirdly, there would have been no control over the amount of fishing time. They would have been able to fish 24 hours a day, seven days a week. This would have been very detrimental to the stocks of Cook Inlet.

Q And what would this have done, if indeed anything, to those salmon going up or down those 131 stream systems?

A It would more than likely have depleted a lot of the races in specific streams of the systems we have mentioned.

MR. PHILLIPS: May the witness be shown, your Honor, Plaintiff's Exhibit 73, I believe it is?

May I see it just a moment, please?

BY MR. PHILLIPS:

Q Mr. Stewart, I am not sure that you have seen this exhibit before, and I will ask you first, have you seen it or not?

A No, I haven't.

Q Perhaps it would be in order for me to explain that this, as you see, is a map of Cook Inlet on which certain lines have been drawn. You see those lines?

A Yes, I do.

Q And I think it's a fair statement to say that that exhibit shows three lines, three different lines?

A Yes.

Q The first line, or the line closest to shore is a line that generally goes along the coastline. Do you see that line?

[582] A Yes, I do.

Q And then the next line is a line representing the three-mile limit. Do you see that line, sir?

A Yes, I do.

Q And the third line is a line that represents, as I understand it, the contiguous fishing zone. That is the innermost line. You see that, sir?

A Yes, I do.

Q Now, I want to direct your attention to that area of water which is within the last line that is—that is outside, but enclosed by the contiguous zone line. Do you see the area that I am pointing to?

A Yes, I do.

Q Now, having directed your attention to that area of water, I will ask you to tell the Court whether or not you have an opinion as to what would be the impact on the fishing resources of Cook Inlet if in that body of water there was no control of fishing and no regulations applicable to fishing. Do you have an opinion, sir?

A Yes, I do.

• • • •

[586]Q Directing your attention, Mr. Stewart, to the area of water enclosed by the innermost line on Exhibit 73, and assuming that that area of water and the fishing therein was not controlled either by the present Alaska regulations or that it had not been controlled prior to Alaska Statehood by the federal regulations under the White Act, what is your opinion as to the impact would have been with the absence of such regulations?

A Again, in my opinion, it would have had disasterous effects on the fishing resources of Cook Inlet.

Q And would your reasons have been the same as those you gave a [587] moment ago?

A Well, I am not sure I listed all of my reasoning.

Q I want you to list them all, Mr. Stewart, if you will.

Q First of all, in this area under consideration, we have five species of Pacific salmon moving through these waters that could be intercepted by a fleet or gear without any regulations or control at all. Secondly, at the present time in the Cook Inlet area we have more than enough gear. The gear is adequate to harvest the surplus of stocks available to the fishermen at this time.

Third, this area contains large stocks of king crab. Again, we would have no control over regulating this fishery. At the present time, again, we have more than adequate gear to harvest the surplus of king crab stocks in the Cook Inlet area. We would lose control of regulating the type of gear, the amount of gear and the amount of time allowed to fish.

As a seventh point, if a fishery was allowed to intercept salmon stocks in this area, we would be harvesting on a mixed stock of salmon farther away from the stream of origin or the home stream where these salmon spawn than we are now, which is undesirable from a management standpoint.

Again, going back to the basis for the regulations, it is to maintain a maximum harvest of the stock and at the same time assure a seeding or a spawn stock to perpetuate the species.

[588] Now, these points I have just made, I feel if this area was uncontrolled by regulation by this state such

as we have been doing now and as the basis of our scientific management, the effect could be disasterous to the stocks and have a very detrimental effect on the whole economy.

Q Could you give us any opinion as to how long under those circumstances the salmon stock would last?

MR. BRADLEY: Object, your Honor. Move to strike the "whole economy" portion of his response in that he is not qualified to give that kind of an answer.

THE COURT: It will be disregarded.

BY MR. PHILLIPS:

Q Okay.

A I don't think I could set a time that it would take to deplete these stocks, but again, in my opinion, it would be a very short time.

Q Yes, sir. Now, would your answer be the same, and would the same disasterous effect occur if instead of no regulations at all being applicable to this center part of the water, but the landing law was in effect?

A Again, in my opinion, the effects would be the same.

Q Yes, sir, notwithstanding the landing laws?

A Right.

Q Yes, sir. Now, when you made your compilation of the salmon systems or stream systems, were you also asked for purposes [589] of giving the facts to this Court to designate the other fisheries in Cook Inlet?

A Yes, I was.

Q Can you do so, using perhaps the Exhibit 73 you have before you?

A It would probably be better if I could use a chart that I see.

• • • •

BY MR. PHILLIPS:

Q I believe, sir, at the noon recess we had reached the point where I had asked you to designate or tell the Court the other areas in Cook Inlet where there are fisheries, and you were about to do that, as I recall, and needed a chart to do this?

A Yes.

MR. PHILLIPS: Your Honor, may I ask the witness to step [590] to the chart?

• • • •

Q You are familiar with this chart, are you, sir?

A Yes, I am.

Q Now, using the pointer, if you please, and if you find it convenient, would you point out to the Court where the other fisheries are in Cook Inlet, and tell the Court what they are?

A We have four other major fisheries in the inlet. There are shell fisheries and they all take place south of the latitude of Anchor Point. We have a tanner crab fishery, a dungeness crab fishery, a shrimp fishery, a king crab fishery. Now, the dungeness, tanner crab and shrimp fisheries take place in this area here (indicating).

Q Would you describe for the Court what area you are pointing to?

A This is the outer Kachemak Bay limits in the southern district of Cook Inlet. The king crab area is all of these waters through here (indicating), down and around the Barren Islands.

[591] Q And again, for the record, would you describe where on the chart you are pointing to to show the king crab?

A This would be the lower—what we call the lower Kamishak Management District, all of these waters in through here (indicating).

Q Is that almost entirely across Cook Inlet?

A Yes, it would take in the waters from Cape Douglas up to Point Gore here, including the Barrens. This area here (indicating).

• • • •

[596] GEORGE WILLIAM ROGERS

being first duly sworn upon oath, testified as follows:

• • • •

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q What is your profession or occupation, Dr. Rogers?

A I am an economist. At present, I am with the faculty of the University of Alaska.

Q I see. Where do you live, sir?

A I live in Juneau, Alaska.

Q How long have you lived in Alaska?

A Twenty-seven years, with two absences, one for two years, and one of one year.

Q Inasmuch as I am going to ask you about some surveys and studies that you have made, I want to go first to your [597] qualifications, if you please, and would you start, sir, by telling us your formal educational background?

A I have a bachelor's and master's degree in economics from the University of California at Berkley. I got the bachelor's in '42 and the master's in 1943. I have a Ph.D. from Harvard University in political economy which I got in 1950. I have been a visiting fellow at Clare College, Cambridge University, England, for one year. I have been a letter fellow at Harvard for two years, and I have been affiliated with the University of Alaska since 1960.

Q Yes, sir. And what is your present position with the University of Alaska?

A I am a research professor with the Institute of Social Economic and Government Research.

Q Do you belong to professional societies?

A Yes, I do, to the American Economic Association, the Regional Sciences Association, the American Academy for the Advancement of Science.

Q Have you authoried publications?

A Yes, I have. I have authored three major books in regional studies. Two of them have been in print and are still in print since the early 1960's, I will identify them if you wish, and are used as texts and references and readings in regional studies at a number of major universities in the United States.

[598] Q I don't want to prolong this. I am not familiar with these publications, of course. If any of them relate to the subject of the studies or the type of studies that you made, I would appreciate your naming them. Otherwise, we will pass them up.

A Yes, they do. They are analyses or attempts to set up the basis for analyzing regional economies using the Alaska economy as the basis of study. One is Alaskan Transition, The Southeast Region, which was published by Johns Hopkins Press in 1960, and a second printing in 1967. The second is the Future of Alaska, the Economic Consequence of Statehood, also Johns Hopkins Press, 1962, with a second printing in 1969. Both of these books were written under the auspices of Resources for the Future, Incorporated, under their regional studies program. A third book which was more recent in dealing with the petroleum impact on Alaska is Change in Alaska Petroleum, People in Politics, which was published jointly by the University of Washington Press and the University of Alaska. In addition, I have done a number of monographs under the auspices of the Institute of Social Economic and Government Research, and also for several of the states and federal agencies. I won't list those because they're rather voluminous, but they all deal with the matter of regional analyses, primarily.

In addition to my publications, I have also done special [599] consulting work both for the state and federal governments and for the Canadian Government. My books and studies have had quite a wide circulation in Canada and in foreign countries, and for example, in 1970 I was a special consultant to the Constitutional Review Section of the Privy Council of Canada on the matter of a study on regional dimensions of environmental management.

I have also been a member of advisory committees in Canada on northern transportation and research in general.

My work for the State of Alaska has been with the various planning agencies since statehood and with the Alaska Department of Labor.

Q Dr. Rogers, excuse me, I didn't mean to interrupt you. I want to get quickly and very briefly from you your employment background with particular reference to your specialty, and I suppose the way to do this perhaps most expeditiously is to ask you, sir, what areas of economics, if any, have you specialized in?

A I have specialized in, as I said, regional aspects of economics.

Q I will come back to that in a moment. Now, very briefly give the Court your employment background insofar as it relates to your field and specialty of economics.

A Right. The various consulting assignments I mentioned all relate to this, but my employment—formal employment before I was employed by the University of Alaska was primarily with [600] the United States Department of the Interior as an economist, and it was during this period that the Interior Department was attempting to set up regional programming and policy determinations on a regional basis. For a period of two years I served, in 1951 through '53, as chairman of the Alaska Field Committee of the Interior Department, for example. After that, I was with the Arctic Institute of North America from 1956 through 1960 as a staff social scientist, and it was during this period that I did much of my consulting work with various governmental agencies. And since 1960 I have been with the University of Alaska, primarily in research and most of the research much oriented to regional analyses.

Q Now, sir, if you will, define for the Court the specialty in which you have engaged which, as I understand it, is regional economics.

A That is correct, yes. It is simply a—it is a matter of looking at the geographic dimensions of economic change, breaking down your study from national entities or large political groups such as states to units that have a natural social economic cohesiveness or internal structure. Studying the operation of these smaller units internally, and as they relate to larger units. It is an attempt to get at—

Q Are there various areas, regions in Alaska other than the Cook Inlet region?

[601] A Yes.

Q I have—name some of those.

A The basic studies that I have made for the State were designed to divide the state into manageable research and management units of a size that had some meaning. The division that I set up with Dr. Richard Cooley of the University of California shortly after statehood, for example, is still in general use throughout the state by federal and state agencies. This divides Alaska into five major regions. Each of these regions can be studied separately. They're large enough, but they all have some tie together, and the importance of this is to get at an understanding of what causes change, and the way you get at this is to get down to where the change is occurring and then study how it spreads through a larger system.

MR. PHILLIPS: May it please the Court, we submit Dr. Rogers as an expert in the field of economic, and more particularly, in the field of regional economics.

MR. CHARNEY: No objection.

THE COURT: He may then be so qualified.

You may continue.

BY MR. PHILLIPS:

Q Dr. Rogers, at the request of the State of Alaska, have you made certain studies with regard to what we refer to as the Cook Inlet region or area?

A Yes, I have.

[602] Q Could you describe to the Court how you went about those studies, what sources you consulted and generally or specifically, shall I say, the time you have devoted to this subject?

A Yes, I will. The first step was to define geographically the area that I would be considering, and I took—this was determined by the interest of this case, the natural conditions and the availability of statistics as the most logical unit, the Kenai-Cook Inlet census district or election district.

Q What, sir?

A The Kenai-Cook Inlet census district or election district, the two are synonymous. This, roughly, covers

the drainage of the Kenai Peninsula and the opposite shore of the mainland into the Cook Inlet, itself.

* * * *

THE WITNESS: I have here a copy of the official census map which divides it and is identified on the map here. It starts [603] roughly up in the Aleutian Chain drainage here, excluding this cut across the inlet, right—oh, let's see, it is right at this point, and then it follows the drainage down the spine of the Kenai Peninsula and then straight across the Point Bishop, and then again—and then right across here (indicating).

BY MR. PHILLIPS:

Q Is that Point Bishop, or Cape Douglas?

A Cape Douglas, I'm sorry. I have got my mind—the description is contained in the census report and I have here this map that is the area I—

Q Does that area exclude Anchorage?

A Yes, it does. Anchorage is up here (indicating). It excludes Anchorage and it excludes the entire Turnagain Arm area.

Q Now, if you please, take your seat again, Dr. Rogers. Are you telling us that statistics are available for this region which you have just described?

A Yes, they are. This, as I say, has been a census district since the 1960 census. Early census reports, it is possible to compile the data from recording districts which make up or did make up the area covered by their larger census districts.

Q All right. Now, having identified the area which you have just done, how did you then go about making your studies?

A Well, then the next step was to gather all available statistics on population, employment, income, production, value of [604] commodities and so on that related to this particular geographic area.

Q Now, where did you get that data?

A This—I got the population data from census reports and from the annual estimates of population, and components of change made by the Alaska Department of Labor, and from the vital statistics division of the Alaska

Department of Health and Welfare. The employment data I got directly from published reports of the Alaska Department of Labor on work forces, total work forces, estimates by area, by industry, by month, for the years 1961 through 1970. I also got data from their statistical quarterlies which have more detailed breakdowns.

Incidentally, these data are available on exactly the unit I described, the Kenai-Cook Inlet unit. There is no question of adopting the data to the statistical area.

The fisheries employment data I worked up from records in the Juneau office in which I had clerks take it from the fishing tickets, the year's fishing in the areas of Cook Inlet for the key week which was the week with the 12th day of each month. This was to avoid duplication or double count of people and is the method used by the Department of Labor in other estimates. And from these years I was able to then estimate comercial fishing employment, so that the sources of information were the Alaska Department of Labor and the Alaska [605] Department of Fish and Game.

Now, on income data, by principle sources were the U.S. Department of Commerce, a survey of the current business, which puts out for each state of the union estimates of personal income received by residents, by industrial source, for each year. I also got further information from the Alaska Department of Labor, payroll data by industrial classification for this particular area, and from the Department of Fish and Game the value of the catch of fish to fishermen operating in the area.

These were the principle sources of income data. Value of product were primarily from published reports of the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and with some additional information from the U.S. Department of Commerce, Alaska Department of Labor as regards definite expenditures and employment.

There were several other sources, but these were my primary sources.

Q Are those recognized sources?

A Yes, they are. The data are generated just for this type of purpose.

Q Now, from this data were you able to arrive at any conclusions as to the nature of this region and the various economic principles and bases upon which it exists?

A Yes, I have. I did develop very detailed analyses which are [606] an attempt to put together a model of the economy, primarily during the 1960's, but generalizations that can be drawn from these I think are quite obvious.

Q And then I want to come to that.

A Okay, fine.

Q I want you to describe for the Court, if you can, the economic characteristics or principle characteristics of the Cook Inlet region.

* * * *

[607] THE WITNESS: Now, the characteristics of the Cook Inlet region, my analysis was primarily for the decade of the 1960's. However, in preparation I did study the production figures, populations figures going back as far as the record extended, and from this and other sources I have formed an opinion or judgment as to the nature of the trends in the economy leading up to the present nature of the economy.

The basis of the Cook Inlet economy has been primarily fishing and the processing of fish since the American occupation. Prior to that, it was, of course, the source of subsistence for the aboriginal peoples. The processing of fish continued and continues to the present day as a sustained operation. The population supported by these activities more or less stabilized at around 2,000 persons from about 1920 on until 1950, then it took a sudden jump up to 6,000 and 14,000, and this was because of the introduction of the further elements into the local basic economy.

The first was definitely the construction of two major bases or stations, rather, and the manning of stations during the 1950's, and then their phasing out during the sixties. The construction of a highway system.

The second and most dramatic was the discovery of oil on the Kenai Peninsula and the exploration and development of oil fields in the upper Cook Inlet and on the Kenai Peninsula culminating in the establishment of an industrial complex which includes [608] petroleum refining, natural gas liquification and the manufacture of ammonia and other products of this nature. The economy during the 1960's, during the first part of the 1960's was still dominantly fishing. Mining was a minor occupation. By mining, I include, of course, oil and gas exploration and development. And then by the mid-sixties the mining development activities had exceeded and then far exceeded the employment offered by fishing; however, since the last two years of the decade there has been a downturn in these activities which was natural because the fields—

BY MR. PHILLIPS:

Q Downturn of what activities?

A The activities of petroleum-related activities. This reflected the shifting from exploration development phase into the production phase, and the prospect is that this downturn will continue.

Paralleling this has been a similar rise and fall in construction, most of it associated with the petroleum development, so during the sixties you have had several things in effect, one is the continuation of fish processing and fishing as a major activity with an upturn toward the end of the decade, which reflected diversification of fisheries and diversification of fish products, the movement more into canning and processing of crab and shrimp and clams.

Then, another element has been the decline in defense activities in the region, and the third has been the rapid [609] expansion and the beginning of the decline in mining and construction going together. These present the underlying forces of the Cook Inlet economy at present.

* * * *

[610] Q My question that I started to ask you, Dr. Rogers, was this: Do economists, and in this case, you as an economist, engage in research that enables you to know which industries have more stability or less stability than other industries?

A Yes, this is really the essence of any economic research, and to develop a regional analysis.

Q And why is stability or the lack of stability important to an area?

A Well, on this set you build continuity that you build your structure, your community. The movement of workers in for a year or a year and a half does not build stability. It does for a period interject income into the local economy which may then generate further income, but it does not result in any continuous growth of a society or a community. And this is the other side of an economy. It's for the purpose of sustaining a group of people in a particular area.

[611] Q Dr. Rogers, at our request have you had prepared this morning some graphs or charts by which you tied together your statistics and your studies?

A Yes, I have this, the aspect that we were just mentioning.

MR. PHILLIPS: Your Honor, may we have the easel and have those up here, or whatever the Court's pleasure. I suppose it makes no difference. Would this be all right?

* * * *

Q Let's move these a little closer, if we can, sir, so Mr. Charney and the Court both can see them. Now, how many charts—how many charts did you have prepared, Dr. Rogers?

A Let's see, I believe there were three charts prepared.

Q And for the record, those are identified as IY, IZ and JA.

Now, first a few questions about these charts, Dr. Rogers. Were these charts, the three here so identified, prepared under your supervision?

A Yes, they certainly were, this morning.

[612] Q And by whom were they prepared?

A By a draftsman in the Division of Land, Paul Simonian. I would have to have someone spell his name.

Q I don't think that's too material. Did he work at your instructions?

A Yes, he worked at my instructions, from my tables.

Q And are all three of these charts prepared on the basis of data which you researched and which you furnished to this draftsman?

A That is correct, yes.

Q Have you had occasion to examine these charts?

A Right now, yes. I mean yes, I have.

Q Well, have you had occasion to examine them with such expedition or such thoroughness, and if you haven't, I want you to do so to enable you to tell the Court whether or not these charts are accurate.

A Yes, they are—I have been checking out the figures here, and they are accurate. I haven't this one. I must point out the draftsman took some liberties with the scale here, because this—

Q This one being—

A —and I should explain that he had done this before I caught him. This, you see, this is the number of people employed. It jumps from 600 to 1,200, but only two industrial classifications jump up there. One is mining and one is [613] construction. In order to get it on the card, he compressed the scale here so these points should actually be up here some place, but the major part of the economy during the 1960's is embraced within the accurate scale range here. That is the only point—objection I had to the drafting, which I don't believe distorts the exhibit.

Q Yes.

A Other than that, it's accurate.

Q Are these charts accurate and based upon the data you supplied?

A Right.

MR. PHILLIPS: We move their admission, your Honor. They are Exhibits IY, IZ and JA.

* * * *

THE COURT: Well, with that assurance, the objection is [614] overruled. They may be then received in evidence.

(Defendant's Exhibits IY, IZ and JA received in evidence.)

BY MR. PHILLIPS:

Q Now, turn this around just a little bit. I don't want to get my back to my friend over here, Dr. Rogers. Let's look first at the chart which has been identified as IY. Will you explain to the Court what is depicted on that chart?

A Yes, I will. This top line represents the population, total population of the Kenai-Cook Inlet area as drawn from official United States census reports as of 1939 through 1960. From 1960 to '70 on the estimates of annual population by the Department of Labor. The bottom line represents the total population of the region either employed in fisheries or fish processing, employed in secondary employment related to those. The unemployed work force normally affiliated with fishing, fish processing, and the dependents of this work force, this is a figure generated from a study of the relation of employment to population and employment to various other industrial classifications of employment. The rest of it, of course, is other activities which represent what I spoke about earlier, the impact of defense federal spending and petroleum and construction on the population now of the region. As I say, this represents not only the people gainfully employed, but unemployed in the region and the dependents [615] of the members of the work force. Shall I go on to the—or do you want to—

Q I am not quite sure, Dr. Rogers, that I understand the significance of this first chart.

A This is simply to relate the population of the region to the basic economy of the region. This is the part that is oriented to the fisheries. This is the part that is oriented to other activities in the region (indicating).

Q So that this really just is a starter?

A That's right, sir.

Q So, that leads you, does it not, to the next chart which is identified, for the record, as IZ?

A Yes, sir.

Q And would you explain to the Court what that chart depicts?

A This chart depicts each of what represents the basic parts of the economy. It is employment in these indus-

tries that are the reason for all other employment, federal employment in this case, primarily defense, fish and food products, mining, which is in this case is primarily oil and gas. I might explain oil and gas is not split up because there is a small amount of hard rock and other mining in the area which for purposes of avoiding disclosure have been lumped in with oil and gas, construction—contract construction and other manufacturing other than food processing. On this scale this represents the yearly average employment and the plotting here [616] represents the yearly average employment in each of the industries for these years.

Q Now, what does this chart indicate, if indeed it shows anything with respect to the stability of these various activities?

A Well, the red line is the fish and food processing which is primarily the processing of the seafood. Notice it starts up here close to 500. This is an average figure. The seasonal peak is, of course, about three times this. It drops in the mid-sixties and then climbs up rather sharply toward the end.

The blue line is federal employment, as I said earlier, it is primarily defense, represents the movements of military personnel into the region, their withdrawal, their movements back and withdrawal again.

The black line is mining starting about 50 persons per month average, and running up to almost 1,200 in this peak. Bear in mind that the scale here has been distorted to get this on the chart. Construction is the dotted line which parallels very closely the employment in mining. By the end of the decade, the employment in mining dropped down to approximately the level of fishing from the peak up here (indicating), and of course, construction had dropped, well, down to about 300, a little more than 300 per month by the end of the decade.

[617] The yellow line represents other manufacturing, starts out very, very small amount of other manufacturing, but I don't have the data on which to consider such things as bakeries, print shops and so on. Then, when it gets to about 1967, it starts climbing and levels off. This

represents the point at which employment in other chemical processing came into the region. Notice the leveling off here (indicating).

Q Does this chart, in your judgment, show the importance of fishing to the Cook Inlet region?

A It shows the importance of the fishing to the Cook Inlet in terms of maintaining stability and maintaining an economy—

Q Yes.

A —as contrasted with the very sharp boom of the other newcomers.

Q I notice this starts in 1960 and ends, presumably, in 1970. Why doesn't it include 1971 figures?

A The reason for my exclusion of '71 is that I could not get complete data. I did have six months in most cases, but the indications are that this has dropped down roughly 10 per cent to roughly 500.

Q In '71?

A In '71, yes, and construction has dropped a little further. This has leveled off. It is probably about at this point (indicating).

Q This is what?

[618] A The blue line, federal—I'm sorry—and the other manufacturing both have leveled off, and I don't have data on the fish processing and fisheries yet for '71.

Q That brings us, then, to the last chart, does it now, which is JA?

A Correct.

Q And what do you attempt to show on this chart?

A This is the personal income received by residents in the region by basic economic orientation. Now, the reason for doing this is that I want to get the impact of these activities again on the region. The value of fisheries products, for example, is considerably in excess of the figure I show here as the value of crude petroleum and natural gas which runs to about a quarter of a million dollars right now, which would put it way up here some place, but most of that value goes outside in the form of profits and payments for equipment and supplies, nonresident workers. Then, the rest of this, as I say, represents the income retained or escalated within the region,

and which reflects the income generated at a regional level.

The resources in the region, as I say, generate a great deal more value, but what we're interested in here is the economy and its continuation. The fisheries figure represents the amount of money paid to resident fishermen and to resident workers in the fish processing plants, and with some additional [619] money represented by supplies purchased by fishing vessels and by the canneries and processing plants. The level has been very level with a slight rise toward the end. It's about $7 million by 1970.

The other sources of income represent the incomes that are generated by construction, primarily, and by petroleum activities and these rose from—the reason I have this dotted line between 1960 and '64 is I did not find the basis for generating the figures in this intervening period. I did have a basis for '60 and '64 on, but in 1960 all other activity generated $5.2 million worth of personal income within the region as compared to $3.4 million in fisheries and this is a cumulative total we are looking at, the volumes here. This has risen very sharply.

Other activities at the peak were added to the economy, $63 million in 1968, and this has now dropped off to about $40 million in 1970, and the indications are that it's dropping further.

Q During 1971?

A That's right.

Q Now, I want to direct your attention to the orange line which represents fishing and fish products and which indicates, as I understand it, at the year 1970 some $7 million of value.

A Yes.

[620] Q Now, explain what all of that $7 million includes.

A This includes the amounts paid to fishermen for the fish caught. It represents the wages paid to people working in processing plants. It represents the supplies and services purchased locally by the industry. That is it, basically.

Q Does it represent the value of the canned—

A It does not represent the value of the canned salmon or frozen salmon.

Q Yes.

A The value, the difference between this and that value would represent the value that goes outside in the form or [*sic*] profits and, of course, supplies that are imported into the region are not generated within the region.

Q Yes. Does this, then, this chart, JA, generally reflect and substantiate your opinion as to the importance of the fishing industry to Cook Inlet?

A Yes, as a continuing stable element within the industry of considerable significance with some indication of growth.

Q Yes. Excuse me a moment.

One other question Mr. Cranston called my attention to, and I think we can—looking at this U.S. Geodetic Chart 8502. Now, was it possible to draw any conclusions as to how this activity and wealth were divided between the areas north of the southern point of Kalgin Island and the area south of Kalgin Island to Cape Elizabeth and a line across [621] to Cape Douglas?

A Well, it was not possible for me to get good data on the processing, because there is at this point a commingling of runs.

Q At this point, you are referring to—

A I am referring to almost as though you drew two parallel lines at the southern and northern parts of Kalgin Island. This appeared to be one of the major areas of production. The reason I am hedging is that the data also hedged because the fishermen may be operating on both sides of the line or the fish that are spawning below the line may be caught above the line, depending on the tides and winds. These are things that I have no experience on, but I do know they occur within a fishery. However, I did get it for the period '60 to '65, but I haven't been able to find in the process list indications of the degree of the number of fishermen active below this line and above.

Q Above the south line?

A Above the south line, right. This indicates that for the period '65 to '70 the percentage of fishermen employed

or engaged in fishing in the Cook Inlet anywhere between 70 and 80 percent were active below this line.

Q Below Kalgin Island?

A Right. Now, the figures that I collected were the most recent, the ones that the data was available for, and [622] represent the period in which the shellfish activities were at their peak, of course, and I do not have data beyond this. This is one reason I did not prepare an exhibit on this, but the indication is that the bulk of the fishing since the mid-sixties has been below the line.

* * * *

[636] KENNETH ROBERT MIDDLETON

being first duly sworn upon oath, testified as follows:

* * * *

[637] DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Middleton?

A 3134 Knik Avenue, Anchorage.

Q What is your present occupation?

A Regional supervisor for the Division of Commercial Fisheries, Alaska Department of Fish and Game.

Q How long have you been employed by the Alaska Department of Fish and Game?

A Since 1960.

Q And what have your duties been, generally?

A My duties have varied all the way from assistant area biologist when I first started with the area, assistant area biologist, then area biologist and assistant area supervisor for the Bristol Bay area, then manager of the central region.

Q That is what you are now?

A Yes.

Q Is the Cook Inlet district contained within the central region?

A Yes, it is.

Q Would you describe briefly what your responsibilities and duties are as regional supervisor?

A Oh, my duties are to administer and see that the regulations are adhered to, enforced throughout the region, as well as the fishery management and research programs under my [638] jurisdiction.

Q And in this connection, is it necessary for you to know the geographical area over which you have authority in Cook Inlet?

A Yes, it is.

Q And upon what do you rely in making this determination?

A Our base reference is the Alaska Fish and Game regulations.

Q All right, could you—

MR. CRANSTON: Mr. Clerk, I wonder if we could hand the witness Exhibit IX, please.

BY MR. CRANSTON:

Q That is a copy of a pamphlet containing the Alaska Department of Fish and Game regulations.

Mr. Middleton, you said you relied on the regulations. Could you refer to Exhibit IX which has been placed in front of you and tell me which regulations you refer to when you answered my question?

A Okay, if you will give me a moment here to locate myself, I can do that. Is it your wish that I read the regulation?

Q Would you tell me which regulations you are referring to?

A Yes, this is Article 155, A.A.C., 21.100, "Description of Area."

Q Yes. Would you read that, please?

A "The Cook Inlet-Resurrection Bay Area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren [639] Islands."

Q All right, have you relied on any other regulations to determine the geographical area over which you have authority?

A No, no, these are the regulations that dictate our area of jurisdiction.

Q Have you ever considered—do you give any consideration to any regulations in Chapter 39?

A Yes, yes.

Q All right.

A This—you are referring specifically to waters of Alaska, I believe, under "General Definition"?

Q Well, is that a regulation upon which you rely in order to make your determination?

A Yes.

Q All right, would you find it in the regulations and tell me what you are referring to?

A Yes. The regulation defining the waters of Alaska is 5 A.C. 39.975 (13).

Q Would you read that, please?

A "Waters of Alaska means the waters north and west of the international boundary at Dixon Entrance, including those extending three miles seaward, A, from the coast, B, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, C, from an island or group of islands, including the islands of the [640] Alexander and between the groups of islands and the mainland.

Q All right, you have referred to two regulations. Are there any others upon which you rely?

A Yes, the definition of international waters.

Q And where is that found in the regulations?

A I believe that is Section 36. If you will give a moment here—

MR. BRADLEY: Would you give the page when you find these sections?

THE WITNESS: Oh, okay. Well, I can do that simpler. I have got the pages here, 5 A.C. 21.100 is page 5-67. Waters of Alaska can be found as 5 A.C. 39.975 13. I just cited page 5-113. International Waters. This is 5 A.A.C. 36.010, Description of area. The international water area includes all waters outside Alaska's three-

mile limit. That is, beyond those described in 5 A.A.C. 39.975 13, which did describe the waters of Alaska.

BY MR. CRANSTON:

Q All right. Now, over what geographical area in Cook Inlet have you determined that you exercise authority?

A Over those, as I stated, that describe the waters of Alaska.

Q And with respect to Cook Inlet, what portion does that include?

A Well, that is the waters north of Cape Douglas and extending to Cape Fairfield, and including the Barren Islands.

Q Do you administer the Alaska Fish and Game regulations with respect to commercial fishing with respect to residents and [641] non-residents of Alaska within the area you have just described?

A Yes.

Q And could you give some examples of the type of regulations which you administer within that area?

A The basic regulations that we are responsible to administer concern fishing seasons, weekly fishing periods, type and length of gear, closed waters, open waters. There are numerous other miscellaneous regulations. These are the basic ones.

Q Could you give an example of closed waters?

A Well, there—yes, we have closed waters at the mouth of streams, waters are closed a mile from the terminous of the mouth of each salmon stream.

Q Are there any areas in which specific types of salmon gear are prohibited?

A Yes. We prohibit certain types of gear in certain areas.

Q In the southern area of Cook Inlet are there any examples of this?

A Yes. The southern district of Cook Inlet, the allowable gear is hand purse seine and set net. Drift gill net gear is prohibited in that area.

Q What area are you talking about?

A I am talking about the area below the latitude of Anchor Point.

Q Now, are there any areas defined by the Alaska Department of Fish and Game regulations where, in connection with your duties, [642] you apply the regulations only to residents of Alaska?

A Yes, in the case of international waters, the residents of the state are prohibited from fishing salmon net gear or long line gear in international waters.

Q And that is the area you just earlier defined?

A That I cited as describing international waters in the regulations, correct.

• • • •

[643] Q Can you tell me, Mr. Middleton, how many sets of the Alaska Department of Fish and Game regulations have been published since statehood?

A The annual publication rate is 10 to 15 thousand. Now, therefore, I would deduce that approximately 100 to 150 thousand regulations have been printed and distributed by the Department since 1960.

Q And have those regulations been distributed?

A Have they been distributed?

Q Yes.

A Yes.

Q To whom have they been?

A Well, to quite a number of federal and foreign agencies. Do you wish me to cite specifically those that I am aware of?

Q Well, can you tell me those instances of which you are personally aware?

A Yes. The Bureau of Commercial Fisheries—ex-Bureau of Commercial Fisheries in Washington, and also the regional office in Juneau. The Bureau of Land Management and Bureau of Indian Affairs. Canadian Department of Fisheries, quite a various multitude of governmental agencies and foreign countries upon request, oftentimes from foreign countries.

Q Have you, yourself, personally delivered copies of these regulations to representatives of foreign countries?

[644] A Yes, I have.

Q And to what countries?

A Japan and Canada, both.

Q And is this in connection with your official duties?

A Yes, it is.

Q Were these representatives to whom you delivered the regulations fishery officials of those countries?

A Yes, both fishery officials and industry personnel from the fisheries industry.

Q And do you do this about how often? Is this yearly occurrence, or—

A Yes, usually yearly, there are some requests. Most of my contacts are personal contacts, people that come through my office, or if I happen to be out of the country into Canada or Japan, which I am upon occasion, why, this can be on perhaps a half a dozen times, perhaps a dozen exchanges in one year.

Q Now, have any protests or criticisms been made from any foreign countries concerning the administration by the Alaska Department of Fish and Game regulations through the area of Cook Inlet which you describe?

A No, not to my knowledge.

Q Has any such criticism been made by the United States Government?

A Not that I am aware of.

* * * *

[660] FRANK M. DeROSSITT

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. DeRossitt—

THE COURT: Just a moment. How do you spell your last [661] name?

THE WITNESS: D-e-R-o-s-s-i-t-t.

THE COURT: All right, now, counsel.

BY MR. CRANSTON:

Q Mr. DeRossitt, what is your address?

A 2434 Albany Street, Eureka, California.

Q And what is your occupation?

A Part-time fisherman and longshore stevedore foreman.

Q Have you ever fished in the waters of Cook Inlet?

A Yes.

Q All right, and when has that been?

A I believe I began in 1952 and have fished every year.

Q Now, Mr. DeRossitt, I would like to direct your attention to a time on or about July 6, 1970, and ask you if you recall any incident at that time involving the Alaska Department of Fish and Game?

A Yes, I—

Q All right, would you tell me what that incident was?

A On about that time I was fishing in the—more or less the central part of the lower Cook Inlet off of Anchor Point, and an airplane flew over me repeatedly, and I could assume—more or less know that they were fish protection officers from the Department of Alaska Fish and Game. And they were waving at me negatively, and I decided I must be getting down too far, down about near the deadline, so I picked up [662] and moved out of that area.

Q Mr. DeRossitt, how far from the shoreline were you located?

A I would estimate about 15 miles from the west bank of Chinitna.

Q All right, Mr. DeRossitt—

MR. CRANSTON: Your Honor, I wonder if Mr. DeRossitt might approach the blackboard in order to refer to the chart?

* * * *

Q Now, Mr. DeRossitt, you are looking at U.S. Coast and Geodetic Survey Chart 8502, the 17th edition, July

19, 1971, and I wonder if at this time you would take my black pen and mark on this chart the location where you were at the time the event you have described took place.

THE COURT: Counsel, I can't—all right.

THE WITNESS: Could I find it and then—

THE COURT: Find it and then step aside before you make the marking.

THE WITNESS: —because I don't see it here. It's been a few years ago. I would say about in this area (indicating). Shall I make a mark?

BY MR. CRANSTON:

Q Yes, please. All right. Now, Mr. DeRossitt, you may step— [663] would you point for the Court to where you made your mark?

THE COURT: All right, I see.

BY MR. CRANSTON:

Q That is about at the location of the letter I in the word inlet. All right, Mr. DeRossitt, you may resume the stand.

Mr. DeRossitt, after the plane flew over you, what did you do?

A I picked up the gear and proceeded to Snug Harbor on the west shore above Chinitna Bay to anchorage.

Q Now, subsequent to the time that you have described, did you—did any other incident occur with you involving the Alaska Department of Fish and Game?

A On this day?

Q Or at any time—

A No.

Q —thereafter?

A Oh, later?

Q Yes.

A I don't know for sure just how many days, three or four days later, a few days later when I came into Kenai River, entered the river and came into our docks at the Columbia-Ward Fishery docks on the Kenai River, there was a patrol boat there with two officers, one of the officers from the State—Alaska State Fish and Game,

Mr. Nutgrass, and he gave me a citation for fishing in the lower area of Cook Inlet below the deadline.

[664] MR. CRANSTON: All right. Now, I wonder, your Honor, if the exhibit which was just marked, Exhibit JB, might be handed to the witness?

THE COURT: JB for identification may be handed to the witness.

BY MR. CRANSTON:

Q Mr. DeRossitt, you have been handed Exhibit JB, and I would ask you to turn to the last page of that exhibit. Now, can you identify what that document is?

A This is a citation that I received at that time, with my signature.

Q All right, upon receiving the citation, or thereafter, what did you do with respect to the matter?

A I called—I discussed it, of course, with several of the other fellows that had received citations and we talked to the cannery superintendent, and we called a lawyer in Anchorage and proceeded to oppose the case, set up our defense in the case.

Q All right. Now, I would ask you to turn to the next to last page of the exhibit which you have been handed and ask you if you recognize what appears there?

A Yes.

Q And what is that?

A I think they gave me this when I came over to the court.

Q And this is entitled "Complaint," is that correct?

[665] A Yes, Complaint, at the time I came over there.

Q All right, would you read that portion of the Complaint, Mr. DeRossitt, which commences at where it states "Complaint" right under the first black line?

A Where it says "did unlawfully"?

Q Yes.

A "Frank M. DeRossitt did unlawfully fish commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing."

Q All right. Now, Mr. DeRossitt, at the time this event took place, and all of the events which you have described, were you a resident of the State of Alaska?

A No.

Q Of what state were you a resident?

A During this time?

Q Yes.

A California.

Q All right, and did you have a commercial fishing license?

A Yes.

Q And what type of license was that?

A Drift gill net.

Q And was it a non-resident license?

A Non-resident license.

Q Now, Mr. DeRossitt, what was the disposition of this case?

A Well, we went to court with our lawyer and she studied the [666] laws pertaining to this particular area, and she said, "I think there was a flaw here in the wording," so when we went in before the judge and the prosecutor, we sat around and they discussed this point and it was pointed out to them that it was a misprint and there could be no such—the wording was wrong, it should have been "at" and it said "to" or something. It was merely one word worded wrong there, and the judge dismissed the case.

Q All right.

MR. CRANSTON: At this time, your Honor, I would move the admission into evidence of Exhibit JB.

THE COURT: Is there any objection?

MR. BRADLEY: Only that it's irrelevant, your Honor.

THE COURT: Well, it will be overruled and it may be marked into evidence as JB.

(Defendant's Exhibit JB received in evidence.)

MR. CRANSTON: And also, if the Court please, I would like to have the chart upon which Mr. DeRossitt made his mark given an exhibit number for identification at this time.

THE COURT: JC, for identification.

MR. CRANSTON: And I will offer Exhibit JC in evidence at this time.

THE COURT: Is there an objection?

MR. BRADLEY: No objection, your Honor.

[667] THE COURT: It may then be marked.

(Defendant's Exhibit JC marked for identification and received in evidence.)

MR. CRANSTON: I have no further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. DeRossitt, when did you begin fishing in Cook Inlet?

A I believe it was 1952.

Q Did you participate in a drift gill net fishery at that time?

A Yes.

Q Do you know when that fishery began in Cook Inlet?

A I'm not sure. I talked to the old-timers at that time and they told me that they had been fishing for years, drifting, but not extensively. It seems as though the opinion was that it began really heavily around 1947.

Q In 1947, this is when it began heavily below Kalgin Island?

A The big heavy fishery had started.

Q Now, did you own your own boat in 1970?

A No, I had a leased boat.

Q And who was that boat leased from?

A From Columbia-Ward Fisheries.

Q Where is that fishery company located?

A The office of the branch is Kenai.

[668] Q And was the boat docked there?

A Yes.

Q Was it docked there for the year?

A Yes.
Q Where did you first receive your citation?
A At the docks at Kenai cannery, the Columbia-Ward Cannery.
Q And how long was it from the time you saw the airplane until the time you received the citation?
A I don't remember exactly, but it must have been at least three or four days, because I don't think I came in. I stayed in Snug Harbor and went back out fishing, and when I came in, they were there waiting for me.

• • • •

KJARTON J. ASK

being first duly sworn upon oath, testified as follows:

• • • •

[669] DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Ask, what is your address?
A 4115 Baker Avenue N.W., Seattle, Washington.
Q And what is your occupation?
A Commercial fisherman.
Q And have you ever fished in Cook Inlet, Alaska?
A Yes, I have.
Q And when did you begin doing this?
A 1962, I believe it was.
Q All right. Now, Mr. Ask, I would like to direct your attention to on or about July 6th of 1970 and ask you if you recall an incident involving the Alaska Department of Fish and Game?
A Yes, I was fishing in Cook Inlet, lower Cook Inlet area, and a plane flew over while I was fishing.
Q All right, and will you describe what took place, please?
A The people in the plane, they motioned to me to pick up my net, as far as I could see.
Q And at the time this took place, how far from the shore were [670] you?

A I would say approximately 15 miles.
MR. CRANSTON: All right, your Honor, I would ask that Mr. Ask be permitted to approach the blackboard.
THE COURT: All right, would you step down to the chart that is right over here?

BY MR. CRANSTON:

Q Now, Mr. Ask, would you please indicate with the black pen which I am going to give you as best you can the location in the inlet where you were at the time the incident you described took place?
A Right in this area (indicating).
Q Now, would you step back and point to the Court the place on the map that you have marked your line? All right, thank you.
MR. CRANSTON: The record will indicate that there is a line extending northward from the letter I in the words "Cook Inlet."

BY MR. CRANSTON:

Q All right, Mr. Ask, you may resume the stand.
MR. CRANSTON: At this time I would request that this chart be marked for identification as Defendant's Exhibit next in order.
THE COURT: JD, for identification.
MR. CRANSTON: And I will offer Exhibit JD in evidence [671] at this time.
THE COURT: Is there any objection?
MR. BRADLEY: No objection, your Honor.
THE COURT: You may then mark it, Mr. Clerk.

(Defendant's Exhibit JD marked for identification and received in evidence.)

MR. CRANSTON: I would hand the Clerk a Xeroxed copy of a document entitled "Case Report" from the Alaska Department of Fish and Game, in the matter of Kjarton J. Ask, and ask that that be marked.
THE COURT: JE, for identification.

(Defendant's Exhibit JE marked for identification.)

BY MR. CRANSTON:

Q Now, Mr. Ask, what did you do then after the airplane flew over you?

A I picked up the nets and I ran northward.

Q And where did you go?

A At that time I ran further north and I continued fishing some more.

Q I see. All right, at any time after that point, or that incident, did you come across any officials of the Alaska Department of Fish and Game?

A Yes, I did, in Kenai River.

[672] Q And how many days after was that?

A It was maybe four or five days, three, four, five.

Q All right, Mr. Ask, would you examine Exhibit JE which has been handed you, I believe, and I would ask you to turn to the last page of that exhibit and ask you if you can recognize the document on that page?

A I do.

Q And what is that?

A It is a citation that Mr. Nutgrass issued me—

Q All right.

A —in Kenai River.

Q All right. Now, would you turn to the next to the last page on that exhibit and I will ask you if you recognize the document which appears on that page?

A Yes, I do.

Q And what is that?

A That is the Complaint.

Q All right. Now, would you please read for the benefit of the Court the language in the Complaint commencing at the fourth line where your name appears?

A "Fishing commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing."

Q All right, Mr. Ask, at the time these events took place, which you have described, of what state were you a resident?

[673] A State of Washington.

Q And what type of license did you have at that time?

A A commercial fishing license.

Q All right, was this a resident, or non-resident—

A Non-resident.

Q Now, then, did you go to court?

A Yes.

Q And what took place at court?

A It was dismissed.

Q All right, do you know why it was dismissed?

A There was a misprint in the fishing regulations.

Q All right, do you know what that misprint was?

A Yeah, it was one word that should have been in the regulations, it was at, a-t, and it should have been to, t-o.

MR. CRANSTON: I have no further questions.

THE COURT: Cross?

MR. CRANSTON: Your Honor, at this point—excuse me—I would move, or I would offer Exhibit JE in evidence at this time.

THE COURT: Is there an objection?

MR. BRADLEY: Your Honor, the United States objects to the relevance of the document, the situation, a citation that was given at the dock on the Kenai River, and it was evidently dismissed, to the issues in this case.

THE COURT: It will be overruled and received. I will view the exhibit—all of the exhibits as to relevancy. It may be [674] received and marked at this time.

(Defendant's Exhibit JE received in evidence.)

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Ask, on July 6, 1970, were you fishing in your own boat?

A No.

Q Who owned that boat?

A The fish company.

Q And where was the boat docked?

A Where it was docked?

Q Yes, normally, where was the boat kept? Where was the boat kept?

A Well, I was not docked when I was fishing.
Q I understand, but when the boat was not fishing, where was it kept?
A In Kenai River.
Q Is that where the fish company was located?
A Yes, Columbia-Ward.
Q Was July 6 the same day that Mr. DeRossitt also saw the airplane?
A Yes.

* * * *

[675] STANLEY D. SWANSON

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Swanson?
A 206 Seventh Street, Juean.
Q And what is your occupation?
A Deputy Director, Division of Commercial Fisheries, Department of Fish and Game.
Q And how long have you had this position?
A Since April of '68.

Q Now, have you had any former positions with the Alaska Department of Fish and Game?

A From the fall of '61, October of '61, until April of '68, I was the director of the Division of Commercial Fisheries.

Q And before then, did you have any occupation?

A From '59, July 1 of '59, until October of '61 I was region supervisor for southeastern Alaska.
[676] Q Now, Mr. Swanson, what were your duties as regional supervisor for southeast Alaska between 1959 and October of 1961?

A Training the area management biologists which we got in '59, and management of the southern region.

Q Now, did you have any responsibility with regard

to the Alaska Department of Fish and Game regulations during that period?
A I helped put them together in the fall of '59.
MR. CRANSTON: All right, Mr. Clerk, I would request that Exhibit IT be handed the witness.

BY MR. CRANSTON:

Q Mr. Swanson, you have been handed Exhibit IT. Would you unfold it, please, and examine it?

* * * *

Q Now, Mr. Swanson, during the time you were regional supervisor in southeast Alaska, did you have occasion to see Exhibit IT?
A Yes, in early 1960 we received a series of charts of which this is one. To the best of my knowledge, this is an original overlay of the Scudder-Gharrett charts.
Q All right, and you say you received these charts. Do you know from whom you received these charts?
A To the best of my knowledge, it was from the Fish and Wildlife [677] Service in Juneau.
Q And by Fish and Wildlife Service, to what do you refer; to what government?
A Well, the federal government.
Q All right. Now, do you recall about what time you would have seen these charts?
A I don't recall the exact time, but it would be before the fishing season started—it would be late winter or early spring.
Q In what year?
A Of 1960.
Q All right. Now, would you examine closely Exhibit IT and tell me if the writing on that exhibit and the line which appears on that exhibit are the ones which you recall having seen at the time you described?
A To the best of my knowledge, they're the exact same lines.
Q All right. Now, what would have been the purpose for you to have seen this chart?
A The director at that time, Kirkness, was very interested in them, and likewise, so was I, from the fisheries

standpoint. The base line would, to us, delineate the area from which the three-mile limit would be drawn and which the U.S. nationals could fish and in which the foreign fleets would be excluded, so it was of importance to us.

Q Now, Mr. Swanson, at any time subsequent to the time you have [678] described, did you see this exhibit again?

A As far as I can remember, not until I recovered them last fall.

Q All right, would you describe—

A I may have, but I am not sure.

Q Now, would you describe when you recovered them?

A On the 18th of November in our storage area.

Q And did you place your initials on the chart when you recovered it?

A Yes.

Q And do those initials, S.D.S., appearing on the lower righthand corner of the chart, are those your initials?

A Yes, they are.

Q And you placed them there when you found it?

A Yes, 11-18-71.

Q Now, had you conducted a search of the records of the Department of Fish and Game for these charts?

A I was requested the day before we found them, by the director, Rickey, to search for them, and I mentioned it to one of our fishery biologists in the office. He mentioned that he knew where there was a box of charts in the storage area. We went back and discovered them. We searched for them, found these charts, a series of them, and then called Mr. Check of the Bureau.

Q Now, you say you found a series of charts. Of what other [679] areas of the Alaska coast did these charts—

A Well, as I recall, it was a complete set of the Scudder-Gharrett original overlays, overlays of their original charts, plus copies, one set of copies.

Q And what portions of the Alaska coast did this apply to?

A I have a list of the charts, but as I recall, it went all the way around from southern—starting—going all the way around.

Q To the Arctic coast?

A As far as I can remember.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Who told you that these maps were the Gharrett-Scudder Line?

A As I recall, it was the then director, Walter Kirkness.

Q Did you see them identified in any other way by anybody else?

A Not that I recall.

Q How do you know they came from the Fish and Wildlife Service?

A I was told by the then director, Kirkness.

Q Who told you they were the base line for measurement of the three-mile limit for measuring—for excluding foreigners?

A This apparently was the assumption of the director and the commissioner at that time.

Q That is all you know?

[680] A That is all I know.

Q As to the status of these maps and their use and importance, who would know more about them, you, or Mr. Gharrett?

A Well, I would assume Mr. Gharrett would, because he drew them or participated in drawing them.

MR. CHARNEY: May I approach the exhibit?

THE COURT: Yes, you may, counsel.

BY MR. CHARNEY:

Q I show you now the right side of this Exhibit IT. I show you it says "Middleton Island." Do you know Middleton Island?

A Yes.
Q Now, that is a four-sided line, correct, a rectangle —what is it? It's a box, right?
THE COURT: Parallelogram.
THE WITNESS: Parallelogram, right. I was only a math major.
THE COURT: All right, I wasn't.

BY MR. CHARNEY:

Q Do you know the locations of the end points of those lines?
A No, I don't know just how Middleton Island would fit inside of this.
Q Well, the corner, the end point of each side of this parallelogram, do you know whether they're on land or do they stop in the middle of the water?
A Well, to the best of my knowledge, they'd be in the water.
[681] Q In the water, all four?
A Yes.
Q How about on the other side of the Semidi Islands; is that how you pronounce it?
A Semidi Islands.
Q That is also more a rectangle, the four points there. Is each of those corners on the end of the land or in the water?
A As far as I know, in the water.
Q These are both sort of boxes around the islands, correct?
A That's the way it looks to me.
Q Your responsibilities, did they involve the creation of regulations for commercial fisheries?
A Yes, they did.
Q What was your role?
A During what period?
Q Well, when you were involved in creating these regulations.
A At the initial outset when we first put them together, the three region supervisors and the director all worked on them in '59.

Q Was it important to know how enforcement—how these regulations would be enforced?
A Yes, of course.
Q Did you ever deal or help create landing laws?
A I was not intimately involved in the landing law. It was more in Roy Rickey's bailiwick. He was the western region [682] supervisor, and then at a later date the Cook Inlet landing law was established.
Q Well, were you ever involved in the landing law?
A Not directly.
MR. CHARNEY: I move to strike the testimony of this witness identifying the exhibit as the Gharrett-Scudder Line. I move to strike the testimony of the witness as these documents coming from the Fish and Wildlife Service, on the grounds that the testimony is hearsay.

* * * *

[683] THE COURT: The motion to strike testimony will be denied. The Court will evaluate the testimony. The motion to strike that portion which identifies it as the Gharrett-Scudder Line is granted. The Court will disregard that portion of this witness's testimony.

* * * *

[684] ROY A. RICKEY
being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Rickey?
A My home address is 1612 Glacier Avenue, Juneau, Alaska.
Q And what is your occupation?
A My occupation now is, I am Director of Commercial Fisheries for the State of Alaska.
Q For what department?
A The Alaska Department of Fish and Game.
Q Have you had any former positions with the Alaska Department of Fish and Game or the Territorial Department of Fish and [685] Game?
A Yes, I have.

Q And what have those been?

A I have been region supervisor in two regions, and I was a research biologist and a management biologist.

Q And in what regions have you been region supervisor?

A Westward region and southeastern.

Q When were you—

A From 1959 to 1961.

Q Now, when you were regional supervisor in the westward region, where were you stationed?

A I was stationed in Kodiak.

Q All right. Now, directing your attention to those years of 1960 and '61, did you participate in the adoption of the original Alaska Department of Fish and Game regulations defining the Cook Inlet area?

A Yes, I did.

Q And what did you do with reference to the adoption of this regulation defining the Cook Inlet area?

A Well, between the Kodiak area and the Cook Inlet area, we had to agree on a dividing line between the two areas.

Q And so, did your functions then involve a determination of what the southern boundary of the Cook Inlet area would be?

A Yes.

Q All right, and do you recall from the regulations what you [686] determined the southern boundary of the Cook Inlet would be?

A Yes. If I remember correctly, we adopted the federal regulations. We proposed them in 1959. The southern boundary was, I believe, from Cape Douglas to Point Gore.

Q All right. Now, after you had participated in this decision, did you thereafter receive from the federal Fish and Wildlife Service any document that confirmed what you did in your definition of the Cook Inlet area?

A Yes, our department received a document from the Bureau of Commercial Fisheries, Fish and Wildlife Service, showing a line that delineated the territorial waters of the state.

Q All right.

MR. CRANSTON: I would request that the witness be handed Exhibit IT.

BY MR. CRANSTON:

Q Mr. Rickey, you have been handed Exhibit IT, and with reference to that exhibit, is this the document to which you referred in your last answer?

A Yes, this is one of the documents we received.

Q I see. Did you receive others?

A Yes, we did.

Q And what were they?

A They were continuations of this line drawn from southeastern clear through Demarkation Point, if I remember correctly; the whole coast of Alaska, in other words.

[687] Q Now, where did you see this exhibit?

A I saw it in the department office in Juneau.

Q And can you tell me the approximate date or time when you saw this exhibit?

A I saw it sometime during 1960. I can't remember the date.

Q And what would have been the purpose for your seeing it at that time?

A The reason we discussed this was we had a question as to how far seaward the state regulations were applicable.

Q I see, and then you used this exhibit as a means to determine that; is that correct?

A Yes, we worked from this base line.

Q Now, Mr. Rickey, you have indicated that this was sent to you or to the Alaska Department of Fish and Game from the Fish and Wildlife Service of the United States; is that correct?

A That is correct.

Q Now, how did you know this?

A I was told this, and I was shown correspondence to this effect. These were received, I believe, by Commissioner Anderson.

Q I see.

MR. CRANSTON: All right, I have no further questions.

THE COURT: Do you have any cross?
MR. CHARNEY: Could the Clerk show the witness Exhibit—Plaintiff's Exhibit 103, please?
THE COURT: Plaintiff's 103?
[688] MR. CHARNEY: Yes.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Rickey, could you please review that exhibit?
A Yes, I have.
Q Is that the letter of transmittal to Mr. Anderson that you spoke of?
A I can't recall exactly. I thought it was a shorter letter than this, but this is too long ago for me to remember the text of it.
Q You have any doubt that it isn't?
A I did not understand your question.
Q Well, can you testify that this isn't the letter?
A No, I can't.
Q Do you recall any of the words in here?
A Do I recall any of the words in the letter?
Q Yes, or the facts stated.
A Not without having to look at the letter.
Q Well, look at it, then.
A Yes, I am looking at it.
Q Okay, do you recall this letter?
A I recall a letter of transmittal, but I do not recall the text of the letter. I was not there at the time it was received.

• • • •

[711] GOVERNOR WILLIAM A. EGAN

being first duly sworn upon oath, testified as follows:

• • • •

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Governor, what is your address?

A It's 716 Calhoun Avenue, Juneau, Alaska, at the present.
Q And what is your present occupation?
A I am the governor of Alaska.
Q How long have you lived in Alaska, sir?
A Going on 58 years. I was born in Alaska.
Q And where were you born?
A At Valdez.
Q And generally, in growing up in Valdez, did you become [712] interested in matters involving Alaska fisheries?
A Very much so.
Q And how long have you had this interest?
A Since I first started working in a salmon cannery at the age of 10 years old.
Q All right, and during the time before Alaska became a state, did you continue your familiarity with the fisheries of Alaska?
A I certainly did.
Q And how were these fisheries controlled?
A The fisheries, both commercial and sport fisheries of Alaska, are controlled by the State through the Department of Fish and Game.
Q And before statehood, do you know how this control was exercised?
A Control was exercised by the federal agency responsible in these matters.
Q All right. Now, one point: How long have you been governor of the state?
A I became governor first on January 3, 1959, until I served two terms, until December 5, 1966. I became governor again on December 7, 1970.
Q All right, so you were the first governor of the state; is that correct?
A Yes.
[713] Q And what did Alaska do at statehood in order to take over control of its fisheries?
A There was a provision in the Statehood Act that the state had to certify to the Secretary of the Interior, and then the Secretary of the Interior would certify to

the Speaker of the House, and the Senate of the Congress, too, I believe, that Alaska had complied with the necessary stipulations that would give it control of the fisheries and game resources under state management.

Q Now, did this certification take place after Alaska became a state?

A It did. I believe it was sometime in April of 1959 that the first certification was made and the state took over control of the fisheries in January 1960.

Q And were these activities of the state relative to taking over the fisheries and fishery matters generally a matter of public concern?

A Very much so. The fight for statehood, the prime important reason for statehood was the feeling on the part of the people of the state that the fisheries were not being managed properly.

Q And in view of the interest of the people, was it important that the area of waters of Alaska pertaining to fisheries be defined?

MR. CHARNEY: Your Honor—

[714] THE WITNESS: Yes.

MR. CHARNEY: The State of Alaska has been leading this witness considerably. At this point, I think we have to object and ask that the questions not be leading.

THE COURT: I don't really find it so, counsel. The objection is overruled. Keep in mind, Mr. Cranston, this is direct examination and, of course, leading questions are improper. I don't find it so at this point; however, the objection is overruled. You may answer, Governor.

THE WITNESS: Yes, of course, that would be a necessity.

BY MR. CRANSTON:

Q And why was this important?

A So that the regulations that would be promulgated would be legal regulations within the jurisdiction of the State of Alaska. I might say, Mr. Cranston, if I might, that in—the State Board of Fish and Game had a meeting sometime in December 1959 in which they adopted substantially the federal regulations and federal definitions of fisheries areas.

Q Now, did these definitions in any way pertain to Cook Inlet?

A Yes, the definitions—definitions as they pertained to Cook Inlet would have been the definitions that had been contained in the federal definition down through the years.

Q Now, generally, what was the concern of the state, if indeed there was any concern, regarding Cook Inlet in this matter?

A Well, right in the beginning, of course, the concern of the [715] state was for all of the coastline, all of the fisheries areas. Naturally, Cook Inlet is an important—one of the important areas in the fisheries of the State of Alaska, and at that—right in the beginning, I don't know that there was a specific—that there was specific things in the minds of the fish and game people other than—different than the considerations over the rest of the coastline.

Q All right. And was there any concern relative to Cook Inlet and the relationship to the term "waters of Alaska"?

A Well, when the matter of Cook Inlet, the definition of the waters was considered, the waters of Cook Inlet, just from the standpoint of the reasonability of the waters being inland historical waters of the State of Alaska, the state adopted the same policing and regulating of those waters that the federal government exercised prior to statehood.

* * * *

[716] Q All right, now, Governor, going to a somewhat different subject, if we may, I would like to ask you if you recall any incidents in 1969 that led up to your subsequent action involving some Japanese herring fishermen in the Shelikof Strait?

A Yes. In 1969 it came to my attention that there had been several violations of Alaskan coastal waters down in the Aleutian Island Chain, and that nothing had been done about these violations by the federal authorities, that they had not brought them to the atten-

tion of the State of Alaska even though there were a number of reported violations.

I wrote a letter to the State Department telling them that the state was vitally concerned and that the state certainly felt that the surveillance and policing of that kind of activity get under way at the earliest possible time.

MR. CRANSTON: All right, I would ask the Bailiff or the Clerk to please hand the Governor Exhibit EC.

BY MR. CRANSTON:

Q Now, Governor, you have been handed Exhibit EC, and this is a series of correspondence. I would ask you to turn in that exhibit to a telegram dated August 1, 1969, from William A. Egan, Governor, to the Honorable Dean Rusk. Do you see that in the file?

* * * *

[717] THE WITNESS: Yes, I have that telegram.

BY MR. CRANSTON:

Q Is this the way you informed the United States Government of the events which you just described?

A That is correct.

Q And would you read that, please?

A "Honorable Dean Rusk, Secretary of State, Washington, D.C., August 1, 1961, Juneau, Alaska. Russian and Japanese vessels reported conducting whaling operations within territorial limits Alaska waters. State patrol vessels unable to keep with situation. Urge State Department request Navy and Coast Guard increase viligence immediately with additional vessels dispatched to scene if possible."

Q Now, Governor, did you receive a response to that telegram?

A Received a letter from Mr. Harrington, the fisheries specialist.

Q I believe in that exhibit file under that telegram which you just read is a letter dated August 15, 1961, from William C. Harrington to Governor Egan. May I again—

A I'm sorry. Oh, here it is, dated August 15, 1961.

Q Now, Governor, is this the reply to which you referred?

[718] A Yes, it is.

Q And would you please read on the second page of the reply the next to last paragraph?

A "As you know, under our system of government, the control of fisheries within territorial waters has traditionally been left to the several states. We should appreciate being informed of the provisions of whatever laws of the State of Alaska might be applicable in the present case, since such legislation might have a definite bearing on federal enforcement capabilities."

Q Now, Governor, concerning that statement of Mr. Harrington's referring to control of the fisheries left to the several states, did you, a short time thereafter, have any incident brought to your attention which required that control?

A Well, in 1962 we received word through Japanese newspapers and through the federal Bureau of Commercial Fisheries bulletins that a Japanese fishing fleet was outfitting to come to the Kodiak Island area, the vicinity of Shelikof Strait, specifically, to fish for herring and to attempt to establish historic rights there.

MR. CRANSTON: All right, I would ask that the Governor be handed Exhibit II, please.

* * * *

[719] Q Now, Governor, in Exhibit II, one or two pages down from the top I would ask you to turn to a translation of a Japanese newspaper.

A Yes.

Q Do you see it there?

A Yes.

Q Now, you, in your testimony, referred to having been made aware of the possibility of Japanese fishing in Shelikof Strait through Japanese newspaper articles. Is this one of the articles which you referred to?

A Yes, this is the article.

[720] Q All right. Now, would you please refer to the third paragraph of that article and read it?

A "Japan is keeping close tab on the regulations of the United States and Canada to this experimental fishing operation inasmuch as Japanese fishing operations south of the Alaska Peninsula are the subject of great controversy within the International North Pacific Fisheries Commission. Reportedly the fishery agency plans to gradually authorize other Japanese firms to operate herring nets should the experimental fishing conducted by the Banshu Maru fleet prove successful, one purpose being to establish historical rights. Also, the agency plans to give careful consideration to the condition of fish stocks and to international developments in authorizing additional operations in these waters."

Q Now, were the possibilities suggested in this newspaper article a matter of concern to the state?

A It certainly was.

Q And why was this?

A Well, because Shelikof Strait traditionally and historically have been waters of the Territory of Alaska and waters of the State of Alaska have been policed and regulated by both the federal government and the State of Alaska Fish and Game authorities as waters of Alaska.

* * * *

[721] Q Now, Governor, upon learning of this proposed Japanese venture in the waters of Alaska, what did you do?

A I took steps to notify the United States State Department and the people in the Interior Department who were responsible for other fisheries activities that related to the federal government, to notify them that the state couldn't count on such a fishery in Alaska waters.

MR. CRANSTON: Would the Clerk please hand the Bailiff Exhibits JG and JH? These, Mr. Clerk, were the ones I had identified and marked just early this morning.

THE COURT: These are for identification?

MR. CRANSTON: Yes, your Honor.

BY MR. CRANSTON:

Q Governor, you have been handed Exhibits JG and JH, JG being a letter dated March 30, 1962, to the

Honorable George W. Ball, Under Secretary of State, from William A. Egan. Is this [722] the notification to which you referred in your testimony, that is the response you made to the United States upon hearing of this?

A It is.

* * * *

MR. CRANSTON: Your Honor, I would as—offer Exhibit JG in evidence as pertaining to the Shelikof Strait incident, and as an official record of the State of Alaska.

THE COURT: Is there an objection?

MR. CHARNEY: No, there isn't.

[723] THE COURT: It may then be marked, Mr. Clerk, after the close of the testimony. Now, you may ask your question, Mr. Cranston.

(Defendant's Exhibit JG received in evidence.)

BY MR. CRANSTON:

Q Governor, would you please read this letter which is placed before you, Exhibit JG?

A Yes. "Honorable George W. Ball," the letter is dated March 30, 1962, "Under Secretary of State, Department of State, Washington, D. C. Dear Mr. Ball: The State of Alaska has been informed by the Coast Guard that a Japanese motor ship and five catcher boats are sailing for the Kodiak area for the purpose of fishing for herring. According to our information, the Japanese ships are planning to stay three miles from Kodiak and mainland coasts. In so doing, the Japanese obviously take the position that they will be fishing in international waters. I have been advised that fishing is being conducted in the vicinity of Chirikof Island south of Kodiak, and it appears likely that the fishing operation will extend into Shelikof Strait and perhaps some areas of Cook Inlet. The State of Alaska has claimed jurisdiction over the entirety of these two bodies of water on historical and geographical grounds, notwithstanding the usual three-mile rule. I am enclosing for your information an opinion [724] issued by the Alaska Attorney General dated December 29, 1959, which sets forth the

basis of the state's claim. The State of Alaska does not wish to cause any international incidents by interference with Japanese operations in view of the paramount responsibility of the federal government in the field of foreign policy. Since this is a matter of serious concern to the State of Alaska, I would appreciate your informing me of what action the federal government intends to take in preventing this foreign fishing fleet from engaging in fishing operations in state waters. Sincerely, William A. Egan, Governor."

Q All right, Governor, did you receive a reply to this letter?

A Yes, there was a reply.

Q And how soon was the reply?

A It was a reply from Mr. Harrington, I believe.

Q Now, before you received the reply, was it necessary for you to communicate with the federal government once again?

A Yes.

Q All right. Now, you have in front of you Exhibit JH. Is this the subsequent reply which you received?

A I would like—Mr. Cranston, I would like to correct—I don't believe I received a reply to this, to the communication that I read, to Mr. Ball. I was thinking to the reply previously that I had sent the year before with relation to the whaling activity out in the Aleutians.

[725] Q And so, then, with respect to Exhibit JG, which was your letter to George Ball, you received no reply; is that correct?

A No.

Q And did you thereafter communicate with him again?

A Yes, I did.

Q And how was that?

A That was by telegram.

Q And is the telegram which you have before you, Exhibit JH, dated April 2, 1962, from William A. Egan, Governor, to Honorable George Ball, that telegram?

A Yes.

MR. CRANSTON: I would offer Exhibit JH in evidence at this time.

THE COURT: Is there an objection?

MR. CHARNEY: No objection.

THE COURT: It may then be marked.

(Defendant's Exhibit JH received in evidence.)

BY MR. CRANSTON:

Q Governor, I will not have you read the telegram. Were you generally—did you state the same things as you did in your letter?

A Yes, and we put—we reported that they had been—the vessels had been sighted in waters that were waters of the State of Alaska.

[726] Q All right. Now, did you receive a response to this telegram?

A I don't believe that I did.

Q Then, Governor, would you describe what events occurred subsequent to the time that you sent the letter and the telegram to Mr. Ball?

A Well, between the time that I sent the letter to Mr. Ball and the time I sent the telegram, you mean?

Q Yes, what—and thereafter, if you will.

A Yes. Well, the Japanese fleet did persist in moving in, and we had no—we didn't receive any word from the State Department. I called the—I phoned the Department of State to talk to Mr. Ball on the phone, told him how serious the situation was, and asked him in that conversation if there wasn't some way they could get together with the Japanese Ambassador and ask them to—if the Japanese would initiate an action recalling those vessels from that area, because of the tremendously volatile situation existing in Kodiak itself, and because of the fact that the State of Alaska would have to move to arrest them in that they were in State of Alaska waters.

Q What, Governor, was the volatile situation in Kodiak to which you refer?

A The fishery, the Kodiak fishery is the life blood of the thousands of people who reside in Kodiak and all

over the island, and they were tremendously upset. They had been [727] getting these reports from the Japanese newspapers and from other sources, also, that the Japanese were coming into that fishery to establish historic rights and there was a very—a very bad chance of violence occurring if something wasn't done.

Q To whom did you fear the violence?

A I feared that the violence could erupt into shooting, shooting at the Japanese vessels or even boarding them, which some of the people who were so intent on securing their own livelihood, it is the human nature thing that happens when someone else comes in to try to take over their traditional fishing grounds that provide their livelihood.

Q All right. Now, in view of this concern, could you describe, then, what took place? Did you have any contacts with the State Department?

A When I talked to Mr. Ball, he said that he would get right on it. He indicated to me that he hadn't seen the previous correspondence, and that he would have someone come right up to Juneau. Within three days, Mr. Ray Yingling, the chief Law of the Sea man in the Department, and someone else, came to Juneau and we had a meeting in my office. I believe that that was on either the 13th or 14th of April.

Q Now, did this meeting solve any of the problems with which you were presented at the time?

A No, it did not. In discussing the problem with Mr. Yingling, [728] I told him how there was a representative of the Coast Guard there and the Coast Guard legal officer, Mr. Moody, the attorney general and then assistant attorney general were among those who were in the office at the time, and I told them I had to make a record. I think the commissioner of Alaska Fish and Game was there. I made it clear to them what a real sensitive and difficult situation was developing and that the State of Alaska would have to move to arrest these people if they didn't get out of there, that those were our waters.

We had a map on the wall and all Mr. Yingling said with relation to his opinion, he said that it would take several weeks for him to research this matter, but that

from a cursory standpoint, just from a cursory look at the map, that he would say that foreign vessels could go up Cook Inlet, foreign warships, even, and I remember asking him what he thought General Mundy would say about that, but I just—that is essentially what happened. There was no—he didn't make any decision and he didn't have—there was nothing decided there.

When Mr. Yingling was leaving, I asked him to come back and reiterated the likelihood that, to him, the likelihood that we would have to move that very day or that evening unless the Department of State could do something to—the next few hours to get these people out of the strait.

[729] Q All right. Now, I take it, then, Mr. Yingling departed; is that correct?

A Yes.

Q And did the state then take any action on its own with regard to this matter?

A Yes, the state arrested some Japanese fishermen fishing in the waters of the State of Alaska, Shelikof Strait.

Q Do you know where the vessels were when the fishermen were arrested?

A I think one of them was within three miles of shore, and one was beyond.

Q Now, after the Japanese were arrested, were they placed in custody of the state? What, exactly, occurred?

A Yes, they were. First, when we knew that we had to do this, all the inquiries made of the State Department and other federal authorities, we found out we had to take this action, we were going to get no help at all in this matter. I mentioned earlier the volatile situation that existed in Kodiak and along the entire fishing ground there, that people were angry and I though how we would board the vessels and how we would take the—take these people in to arraign them. And I called Jim Carroll, the then adjutant general of the National Guard, and talked to him and he said there was a small unit of guardsmen —we only had one or two law enforcement officers in the Kodiak area, but that there was a small [730] unit of

Alaska National Guard members there, and I told him, well, I didn't think that it would be appropriate to have the Kodiak young People in the Guard to be a part of this, that they were fishermen, themselves, and they would have their parents and other fathers would be fishermen and it might not work out too well, but what I wanted was a group to go down there to do everything possible to assure that nothing would happen to any of the arrested people as they were coming ashore, so that we could take the most definite means possible in avoiding any international incident of that nature.

And so a unit of guardsmen were sent down from Anchorage and they were aboard the vessel that arrested the Japanese and took them to Kodiak, and there was no incident of any nature whatsoever. They were arraigned and—under the jurisdiction of the courts of the State of Alaska.

Q I guess an interesting sidelight, Governor, is that there was one injury. Who was that to?

A That was a state trooper by the name of Sergeant Williams who broke his leg boarding the Japanese vessel, one of the vessels.

Q Now, after the Japanese were taken into custody, did they remain in custody for any period of time?

A Not very long. Seems to me at the most it would have been three or four days.

[731] Q What arrangements were made to remove them from the custody of the state?

A Well, an agreement was reached between the lawyers for the Japanese and the lawyers for the state, and with my complete understanding and knowledge that these people would not again engage in any fishing effort in Shelikof Strait or in Cook Inlet, and that was the—and with that, then, with the commander of the fleet signing this document and the state signing the document, then the people that had been arraigned were released to go back to their vessels.

MR. CRANSTON: All right, Mr. Clerk, I would like to hand the Governor—have the Governor handed Exhibit IJ, please.

BY MR. CRANSTON:

Q Governor, you have been handed Exhibit IJ. This is an agreement dated April 19, 1962. Is this the agreement to which you referred?

A This is the agreement that I referred to in my testimony, yes.

Q Now, you stated that you authorized this agreement. Why did you authorize it?

A Well, because we had no—the state had done everything possible prior to the incident occurring and was—I had instructed everyone to be very careful not to cause any more difficulty than was humanly necessary, and we didn't want to get into this argument about an international incident any further than we could—if we could avoid it, and we had no— [732] we didn't arrest these people out of vindictiveness or a desire to want them to go to jail. We arrested them because we had taken all steps possible to keep them out of the State of Alaska waters, and they came in there anyhow, and engaged in fishing. All we wanted was to get them out of there and make as certain as possible that they wouldn't be back again to engage in that fishery.

Q And so, as far as your purposes were concerned, did this agreement accomplish that purpose?

A It certainly did. To my knowledge, there has never been an intrusion or incursion by a foreign vessel of any nation into Shelikof Strait or Cook Inlet in that kind of a fishery.

Q Now, Governor, would the cases which were filed against the Japanese when they were arrested immediately prosecuted?

A No, they were not immediately prosecuted.

Q And why was that?

A Well, because, there again, we weren't—the attitude of the state in that particular case wasn't the bound and determined attitude of getting a conviction and causing these people, the fishermen or the vessel captains any more inconvenience than was possible—than was necessary.

Q Have the terms of the agreement remained to be complied—have they continued to be complied with?

A The terms of the agreement have remained and are still being complied with fully.

[733] Q Now, after the Japanese left on or about the 19th of April, did you receive any communication from them?

A I did. I think it was the commander of the fleet sent me a message through the Coast Guard—U.S. Coast Guard—in which he—it was sort of a pitiful message in a way. He was telling me that his people couldn't go back to—they had been away from home since March 24th or some such date, they hadn't caught a fish, and to go home empty-handed, they would all be broke and they had families—mouths to feed and all, and it was sort of a heart-rending message, but it was a difficult message to answer.

Q Just a moment, Governor. Did you answer the message then?

A Yes.

MR. CRANSTON: All right. your Honor, may I approach the witness and find an exhibit in the Exhibit II?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Governor, you have before you a document entitled, "Department of State, Incoming Telegram," which has references to two other telegrams. Is the reply which you sent to the Japanese request to enter Shelikof Strait once again contained in that?

A In this?

Q Yes.

A Yes, it is.

Q All right, where does it appear on this document?

[734] A It appears as—under three.

Q All right, would you read your reply, please?

A "Banshu Maru Number 31, fishing fleet commander. Thank you for your radiogram. Regret that it is impossible for me to grant permission for your fleet to fish in Alaska waters. The cause is before the state supreme court, but even if such were not true, I could not grant such authority to unlicensed fishermen and

for the use of unlicensed gear. The Shelikof waters are inland waters of the United States and Alaska. The historic use and the historic regulatory records speak for themselves. It is undoubtedly true that your company will incur considerable financial loss because of their unfortunate plans to conduct a fishery in Alaska waters, but if the State of Alaska permitted the dispensation you request the eventual result could very well bring economic catastrophe for Alaska's growing sea products industry and a diminishing of all categories of fishery resources to the point where these valuable resources would be non-existent. The State of Alaska bears no ill will toward the officers and fishermen of your fleet, and the State of Alaska also shares the respect and admiration which our United States government has for your nation. The State of Alaska merely urges that your fishing companies use reasonable discretion as to location of North Pacific fishing efforts. The kindness your people extended to Sergeant Williams of the Alaska State [735] Police after Sergeant Williams broke his leg boarding one of your vessels"—signed William A. Egan, Governor of Alaska.

Q And thereafter, did they return to Shelikof Strait?

A They never did.

Q Now, after the incident which you have described, did you have occasion to discuss these events with officials of the federal government?

A Yes, we arranged to have a meeting in Washington, D.C. That was rather early in May, too, as I remember it. We met—the attorney general, Mr. Moody, and Mr. Gross was assistant attorney general, and myself went to Washington. We had a luncheon meeting with Mr. Ball and Mr. Chayes, the chief Law of the Sea man, Mr. Alexis Johnson of the State Department, and there was a representative from the White House and the Alaska delegation, Senator Bartlett, Senator Gruening and others, and Secretary Udall was there.

MR. CRANSTON: All right, Mr. Clerk, could you hand Governor Egan Exhibit 76, please?

BY MR. CRANSTON:

Q Governor, you have before you Exhibit 76 which is entitled, "Department of State Memorandum of Conversation," and it is dated May 8, 1962, Secretary's Dining Room, and the subject, Discussion at lunch of Alaska's Fishing problems. Is that date and the luncheon meeting therein referred to the meeting to which you referred in your testimony?

[736] A Yes, it does.

Q All right, I would ask you to look over this exhibit if you would and determine or tell us whether this is an accurate statement of what took place at that luncheon meeting?

A Well, there is some inaccuracy here in—as you go down into the memorandum. First, I would like to say that I had no idea that there was anyone there taking this kind of information. It was a luncheon. We were sitting across a long table from each other, and to the best of my knowledge there wasn't any—I didn't know that there was anything being taken, but I—Mr. Chayes' statement that at that luncheon did not jibe with the opening statement here. In other words, what I would like to say is that Mr. Chayes never did say that the State Department would have to take the view that these were international waters. It was, naturally, in the conversation they hadn't made their determination yet, and the possibility of that was open, but as we left that luncheon, Mr. Moody, the attorney general, and I were both—felt elated in that we had been worried that perhaps their [*sic*] would be unilateral political declarations made with respect to these waters on the part of the Department of State. We came from this luncheon meeting feeling very strongly that there was no intent to take that kind of unilateral action.

Q Was it indicated to you at this meeting by anyone that the Department of State had considered that the State of Alaska [737] acted improperly in the Shelikof Strait incident?

A Well, only like I say, any fire only came into the luncheon at one time. That was when it just happened

that Secretary Udall said to me, he said, "Bill you know the Japanese Ambassador said to us that he thought this was a sort of Russian-like action," and I said to him, I said, "Well, did he say anything about when the Arizona went down at Pearl Harbor, did he think that was a Russian-like action," and that was the last of anything that was out of line in any way, shape or form at that meeting.

Q And then no one from the State Department indicated any criticism; is that correct?

A Absolutely not.

Q Was Attorney General Moody at this conference?

A He was.

Q Governor, I would ask you to turn to page two of Exhibit 76, and I am referring the fifth full paragraph. Would you read that fifth full paragraph, commencing with the statement, "Governor Egan"?

A Yes. "Governor Egan and the Congressional Delegation spoke at length on base lines and indicated that their use in the future as in the past by the Fish and Wildlife Service pursuant to a Congressional law of some years ago would clearly exclude foreigners from fishing in Alaskan waters. Attorney General Moody illustrated base lines on a large map of the [738] area showing that with their use Shelikof Strait would be reserved for Alaskans only.

MR. CRANSTON: I would ask that the witness be handed a copy of Exhibit IT, please.

BY MR. CRANSTON:

Q Governor, you have been handed a copy of—or you have been handed Exhibit IT, which is an overlay to U.S. Coast and Geodetic Survey Chart 8502, Cape St. Elizabeth to the Shumagin Islands, and I would ask you to look at the line on that exhibit which you have and ask you if that line is essentially the same as was shown and discussed by Attorney General Moody at the meeting in the State Department which we were talking about?

A This line beginning with Perl Island, if that relates to below the Kenai Peninsula area there, yes, it would

be, following all the way down to Ugak and Cape Sitkinak. Yes, it follows the lines, and I think you will find the description in the agreement made with the Japanese and accepted by them that these general places will show up as the lines that they agreed to stay out of.

Q All right, Governor, then commencing at Perl Island on Exhibit IT, would you read the points which represent the places to which the line goes? Would you start reading at Perl Island and read along the cost of Kodiak?

A Well, on this, it goes from Perl Island down to Point Banks, [739] and down to Marmot Cape, south of—or I guess you would call that southeast of the Barren Islands and then down to Ugak Island off of Kodiak, Cape Sitkinak. It goes to Tugidak and up to Cape Ikolik, and then right across Shelikof Strait to Kilokak Rocks.

Q Kilokak Rocks?

A Kilokak Rocks.

Q Now, I believe we can remove Exhibit IT from the witness stand.

Now, Governor, you have before you Exhibit IV which is the agreement.

MR. CRANSTON: May I approach the witness and locate the Exhibit?

BY MR. CRANSTON:

Q Now, Governor, would you read the description of the area embodied in the agreement which is described as Exhibit IV?

A "Beginning at a point on the outer perimeter of the Barren Islands and proceeding in a southerly line to the outermost perimeter of Marmot Islands, thence on a line to the outermost perimeter of Ugak Island, thence on a line to the outermost perimeter of Cape Barnabas, thence on a line to the outermost perimeter of Black Point, thence on a line to the outermost perimeter of Two Headed Island, thence on a line to the outermost perimeter of Sitkinak Island, thence on a line to the outermost perimeter of Tugidak Island, thence on a line along the

coastline to Cape Ikolik, thence on a straight line [740] directly across the strait to Kilokak Rocks."

Q That is all. Now, Governor, I would ask you at this point to leave the witness stand and approach the exhibit, U.S. Chart 8502, over there, and outline the area which is described by these exhibits in order to familiarize the Court with the geographical area involved.

A From Perl Island here—

Q Governor, just generally define it.

A From here and down and across to Marmot Island (indicating), and down through here and down—well, here's Tuginak, and then back up to Cape Ikolik, and right across here.

Q All right, thank you. You may take the stand again.

* * * *

Q Was Cook Inlet included within the areas which you have described?

A Cook Inlet was included.

* * * *

[741] Q Governor, after the meeting in the State Department which we have just been discussing, on May 8, this—what was the State's greatest concern, now, concerning the incident in Shelikof Strait?

A Well, of course, the concern that we had was the possibility that there would be a unilateral declaration or proclamation declaring those waters to be international waters.

Q Was anyone in your administration, including yourself, aware of a note which had been sent by the Government of Japan to the State Department?

A We were then, or shortly thereafter, aware of a message that had come from the Fisheries Ministry of Japan to the State Department.

Q Governor, I would ask you to turn in Exhibit II, which is in front of you, to the diplomatic note from the Ambassador of Japan to the United States, dated May 3, 1962. I believe you have in front of you paragraphs six and seven of that note, [742] do you not?

A Yes.

Q All right, would you read those, please?

A Paragraph six, "The Government of Japan reserves the right to request the Government of the United States to compensate for all damages incurred in the past or to be incurred in the future by Japanese nationals in connection with the recent actions of the Alaska state authorities."

Paragraph seven, "The Government of Japan is deeply concerned with the effects of the recent unilateral actions of the United States upon friendly relations between the two countries and requests the Government of the United States to take appropriate steps immediately. Embassy of Japan, Washington, May 3, 1962."

Q Now, was there anything there, anything about the suggestion of appropriate steps to be taken which gave you concern?

A That gave us concern, yes, and I am sure that now that my memory comes back, we learned of this note before we had this meeting with—this luncheon meeting, and following that meeting I was confident after what had transpired at the meeting that there wasn't going to be any such declaration. I was confident in my own mind that the people in the State Department weren't all that certain that these were Alaska waters.

Q All right. Now, Governor, if you would turn in Exhibit II to [743] a document dated May 29, 1962, from the Assistant Legal Advisor to the Secretary, Raymond Yingling, to Mr. Leonard L. Bacon.

MR. CRANSTON: Your Honor, may I approach the witness and locate this?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Now, this document is, as you notice from Raymond Yingling. The first paragraph notes the existence of the Japanese communication and the necessity for the answer and suggests that Mr. Yingling reply. Would you please read the portion of the communication which is under I(1)?

A (1) Shelikof Strait. "Concerning the status of Shelikof Strait, the note will indicate that this government does not regard it as an inland waterway on historic grounds, but considers that the waters of this strait outside the three-mile belt along the mainland and around Kodiak Island are high seas."

* * * *

Q Was this the sort of reply with which you were concerned at the time?

[744] A This is the sort of reply which I was concerned prior to the time of the luncheon meeting with representatives of the State Department.

Q Now, do you know whether there was a reply to the Japanese note from the United States?

A There was a reply, yes.

Q And do you know whether the reply contained the statement which was suggested by Mr. Yingling in the document you just read from?

A No, the reply did not go along with Mr. Yingling.

* * * *

Q Governor, I would ask you to refer to Exhibit II and that portion of the exhibit which is the response by the United States to the note of the Government of Japan.

MR. CRANSTON: Once again, your Honor, may I approach [745] the witness?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Governor, would you please read the note which has been referred to?

A Yes. Now, this is at the bottom of the paragraph. Should I read the whole—"The Secretary of State presents his compliments to his Excellency, the Ambassador of Japan, and has the honor to refer to the latter's note P-30 of May 3, 1962, concerning the recent incident involving Japanese fishing boats in the Shelikof Strait between the Alaska Peninsula and Kodiak Island.

"As the Government of Japan is aware, the matter of the seizure of the Japanese fishing boat is now before

the courts of the State of Alaska. The Department agrees that the jurisdiction of those courts depend on whether, under international law, the vessels were seized on the high seas or within the territorial jurisdiction of the State of Alaska.

"A decision on this point necessarily involves determination of questions of fact as well as of law. That is, the precise position of the vessels when seized as well as the interpretation of the provisions and rules of law applicable to the facts of the case.

"Other information presently available to the Department. It appears that the vessels may have been within the state's [746] territorial waters, but until the courts have acted to establish the facts, the Department does not consider it proper to take a position as to whether the vessels were seized within the jurisdiction of the State of Alaska or on the high seas.

"The points raised in the various numbered paragraphs of his Excellency's note are under study in the appropriate departments of the Government of the United States, but in view of the considerations noted above, it is desired to respond to them at a later time."

Q Governor, are you aware of any response later made by the United States Government to the Government of Japan?

A I am not.

Q All right. Have any subsequent incidents of this type occurred in Shelikof Strait or Cook Inlet?

A None.

Q And why has that been?

A Because I am certain that—that because of the agreement made and because of the recognition that these waters are waters of the State of Alaska.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine, Mr. Charney.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Governor, I am very thrilled to have you here testifying. [747] It is a pleasure listening to you. I—as we did in your office a few months ago, I am going to ask you some questions now.

Governor, subsequent to the Shelikof Strait incident, did—I think you have testified that you were not noticed that the United States did not claim Shelikof Strait as international waters?

A The United States, so far as I know, Mr. Charney, has never noticed me that those are waters of the United States.

Q Well, never noticed you that they were high seas?

A That they were high seas, yes, that they were other than waters of the United States.

Q Okay, and you don't recall any other time that you had occasion to worry about this; that is, that no foreign vessels fished in Shelikof Strait, subsequently?

A I can't—since?

Q Yes.

A Since the Shelikof Strait incident with the Japanese, no.

Q And you also don't remember the statement of Abram Chayes shown in that memo, Exhibit 76, is that correct, the memo of the meeting that was in the luncheon conference?

A Where there is an indication that he said flatly that these are waters, or are international waters and there is nothing else we can do but declare them as such, no.

Q You don't remember that. Did the State of Alaska make a [748] memorandum of that conversation?

A No.

Q You don't have any memo of that conversation?

A No.

MR. CHARNEY: May I ask the Clerk to mark this document?

THE COURT: Yes, it may be marked as Government's next in order.

THE CLERK: Plaintiff's Exhibit 118 for identification, your Honor.

(Plaintiff's Exhibit 118 marked for identification.)

* * * *

MR. CHARNEY: Well, I think I am going to ask the witness to read portions of this.

THE WITNESS: Yes.

[749] BY MR. CHARNEY:

Q Could you identify the first letter in that pile?

A Well, undoubtedly, that letter was written by me.

Q It is a letter from you?

A It relates to Russians having been in those waters in 1965.

Q Who was that written to?

A It was written to Mr. William C. Harrington.

Q Okay.

MR. CHARNEY: May I approach the witness?

THE COURT: Yes, you may.

THE WITNESS: I didn't think we were—ever had any trouble with the Russians inside after 1962 or that there was anything after the Shelikof Strait incident where foreigners had gone in or attempted to go in. I can see, obviously, here, evidently that wasn't the case.

BY MR. CHARNEY:

Q Would you read this letter, please?

A "Mr. William C. Harrington, April 29, 1965. A potentially explosive situation is developing. On April 27, 1965, the Department of Fish and Game sighted four Soviet trawlers within Shelikof Strait near Shuyak Island at 11:40 a.m., Kodiak time. These vessels were again sighted between 3:30 to 4:30 p.m. by the Department and the United States Coast Guard. At this time, two of the vessels had departed eastward from Shelikof Strait. The other two were heading north along [750] Shuyak Island as if they were leaving. The vessels were identified on the 335 as follows," then it gives the degree headings for—

Q You can skip that.

A "Identification was not made at the 11:40 a.m. sighting, however. One vessel was anchored two to three miles of Shuyak Island at 152 degrees, 40 minutes west by 58 degrees, 30 minutes north. The other three vessels were about eight miles off Shuyak Island in the vicinity of 152 degrees, 50 minutes west by 58 degrees 35 minutes north. Two of these appeared to be fishing. The hammer and sickle could be seen on all four vessels.

"In view of the claims to these waters by the State of Alaska, which has not been denied by the federal government, and the intense feeling of all Alaskans regarding this, a potentially explosive situation exists if the Soviets continue to invade the waters of Shelikof Strait. It would be appreciated if you would take the necessary steps to so notice the Soviet authorities and request that their fishing vessels refrain from entering the internal state waters of Shelikof Strait. These waters are generally recognized as extending from the tip of the Kenai Peninsula extending to the northerly tip of Shuyak Island, thence down the shoreline of the Kodiak group, and thence across the strait from Cape Ikolik to Kilokak Rocks. I would like to be advised of the [751] results of the action you take." Signed William A. Egan, Governor.

Q Now, next is a letter to you. Well, further down, a letter to you from Mr. Harrington, correct?

A Yes.

Q And that is dated May 14, 1965, correct?

A Yes.

Q Could you please read that?

A It is addressed to me. "Dear Bill, I am writing with regard to your letter of April 29 on Shelikof Strait, which was acknowledged by Fred Taylor on May 6. I am informed here that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait, or exercised dominion. They are outside of the three-mile belt of territorial sea along the coast on each side of the strait.

"In view of this, I am sure you appreciate that any approach we might make to the Soviets on the matter would have to be based solely on consideration of public

sentiment giving rise to a request that they voluntarily refrain from sending their vessels into these waters in order not to upset existing fisheries relationships, and my opinion and official approach along these lines would almost inevitably require this government, perhaps in response from inquiries from the U.S.S.R., to take a public position concerning the status of [752] the waters of Shelikof Strait. This could be to Alaska's disadvantage with both the Soviets and the Japanese might even have the effect of stimulating foreign fishing in these waters.

"It occurs to me also that a request along the lines you suggest might be against our interest in connection with the renewal of the king crab gear conflict agreement and other important matters on which we need Soviet consideration. In view of these considerations, it appears to me that the disadvantages of making a move at this time are such as to indicate delay pending further assessments of the situation as it develops.

"It may be that the incident will not be repeated. Meanwhile, I shall be further considering how we might handle this matter, and expect to be in further touch with you." Signed William C. Harrington.

Q Who was William C. Harrington?

A He was the Special Assistant for Fisheries and Wildlife to the Under Secretary of State.

MR. CHARNEY: Now, I would like to offer Exhibit 118 and ask it be received in evidence.

THE COURT: Any objection?

MR. CRANSTON: There is no objection, your Honor.

THE COURT: It may then be received and marked.

(Plaintiff's Exhibit 118 received in evidence.)

[753] BY MR. CHARNEY:

Q After the Shelikof Strait incident, Governor, did you have any trouble with the Coast Guard and Bureau of Commercial Fisheries in noticing you as to when foreign vessels were fishing inside the waters claimed by Alaska?

A Well, I don't think that the notifications came through directly and promptly to the Department of Fish and Game or to my office, no. I think they—whether you could call that a difficulty or whether it was just a laxity on their part, I don't know.

Q And therefore, you complained and asked to make sure that you would be noticed of this?

A I certainly made it clear that we wanted to be noticed.

Q There was evidence based on other facts that you weren't noticed as to some incidents?

A Yes.

Q The answer is yes?

A Yes. But, you see, the dates here would show that, too. See, this is after—I didn't learn of it until after the fact.

Q Now, at this luncheon meeting in '62, isn't it true that one of your purposes was to persuade the federal government not to make a public statement on Shelikof Strait?

A Well, I don't know that that was the purpose. We went back there to meet with them and let them know that these were waters of the State of Alaska, and why, and show them clearly [754] and distinctly that the federal government itself had regulated and placed these waters as waters of the United States since goodness only knows how long back.

Q Did you ever fish commercially in Cook Inlet?

A No, I never did.

Q Do you have any personal knowledge of any enforcement actions taken by the United States Government in Cook Inlet?

A Only as they would relate to hearsay and general knowledge in talking to fishermen. Alaska has been a small populated area for—since the time it became a territory and you just get the stories from the various areas.

Q You have no—of your own knowledge—

A I couldn't name an individual, no, but I know that people were arrested.

Q You didn't see the arrests or—

A No.
Q How about in Shelikof Strait, the same thing?
A I don't know there.
Q You don't know—
A I don't know that people had tried to—
Q —of any enforcement action taken?
A I don't know of any foreign arrests other than the arrests that we made.
Q You don't know about any American arrests, either, by the federal government in Shelikof Strait?
[755] A Well, the federal government has regulated and policed it.
Q I am not asking you to testify as to what you had heard from other people. I am asking you what you know of your own knowledge.
A I haven't seen an arrest being made, but knowing the federal government, I know that they must have made plenty of arrests in that area in managing the fishery.
MR. CHARNEY: I would like to move to have the last part of that question—the answer stricken as not responsive to the question.
THE COURT: Motion is granted. The last part of the answer will be stricken and disregarded.

BY MR. CHARNEY:

Q Now, you asked the federal government to do something about the Japanese fishing in Shelikof Strait?
A You mean at the luncheon?
Q No, prior to that.
A Yes, we did, as it indicates we tried to do in '65 even later when I—
Q Isn't it true that you—the arrest was done solely on your authority and not as a request of the State Department?
A Well, Mr. Charney, we couldn't get any response out of the State Department. The State Department wouldn't take a position, and we—it was only through—finally, after a series of letters and other communications, a phone call from [756] me to Mr. Ball, the under secretary of state, that we finally got Mr. Yingling up here. But, with respect to the fishing, you asked me

about the meeting and what was said, I can say, Mr. Charney, that the President of the United States told me that we did the right thing. It was a breakfast meeting in the White House in January, 1963.

• • • •

Q Okay, subsequent to the 1965 letter from Mr. Harrington stating that the United States didn't recognize Shelikof Strait as waters of Alaska, did you ever receive any other communication concerning the limits of the territorial sea of Alaska?
A Not that I know of.
Q Do you recall any maps of the territorial sea of Alaska that you received from the State Department?
A No, the only maps—the new charts, are you referring to?
Q Yes.
[757] A Rather than the maps that came about, or the charts that came about as a result of the arrest of the Warren P. Harding.
Q I am speaking about the charts that you have received from the State Department during your governorship.
A Yes, we are aware of those charts.
Q Did you receive those charts?
A We received them after we found out that they existed.
Q Have you seen those charts?
A I haven't personally gone through all of the charts, no.
Q Well, you have seen the set?
A I have seen some of them that they have drawn, yes.
Q They cover the entire coast of Alaska?
A Yes. The State of Alaska figures it objects to those charts as being—
MR. CHARNEY: Would you mark this, please, Exhibit 119?
THE COURT: 119 for identification. I presume you are going to furnish copies of these to—

MR. CHARNEY: Yes, I am.

(Plaintiff's Exhibit 119 marked for identification.)

MR. CRANSTON: I was going to mention that usually we have not been furnished copies.

MR. CHARNEY: Would you please hand those to the witness?

BY MR. CHARNEY:

Q Are those the charts you received, or copies of them?

[758] A I haven't seen—no, I haven't seen this chart—wait a minute. I saw a small facsimile of this one where it makes this cut up into Cook Inlet. I have seen a small facsimile of this, yes.

Q I believe you wrote to the President about this—

A Yes.

Q —correct?

A On August 1 or August 14 or something like that, of 1970—'71.

MR. CHARNEY: Would the Clerk please take this from me, and mark—have this marked as the next exhibit?

THE CLERK: 120 for identification.

(Plaintiff's Exhibit 120 marked for identification.)

BY MR. CHARNEY:

Q Is this the letter you wrote to the President concerning these maps?

A Yes, it is.

Q I believe you protested these maps, correct?

A Pardon me?

Q You protested them?

A I certainly did.

MR. CHARNEY: Could the Clerk mark that?

THE CLERK: Plaintiff's 121.

(Plaintiff's Exhibit 121 marked for identification.)

[759] BY MR. CHARNEY:

Q Isn't this the response you got? We are looking at 121 now. Isn't this the response you got from the Under Secretary of State?

A Yes, it arrived at my office after Christmas, in response to our letter of August, but they say in this letter that they want us to recommend places where they may have made errors or where the lines aren't correct or something like that, as I remember it.

Q Let's read some of this letter. Start with the third paragraph on the first page. "The drawing of these boundaries"—would you read that, please?

A "The drawing of these boundaries involved in considerations which are fundamental to the policy of the United States Government on the International Law of the Sea. Accordingly, overall responsibility for the project was given to the Law of the Sea Task Force, an inter-agency group composed of representatives of the Departments of Commerce, Defense, Interior, Justice, State and Transportation, which directed that the lines be drawn in a manner consistent with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and long-standing U.S. policies concerning the interpretation of that convention.

"An inter-departmental committee operating under the authority and direction of the inter-agency task force then [760] performed the technical task of drawing the precise lines reflected on the maps."

• • • •

Q Would you continue to read the first paragraph on page two?

A Yes. "With particular reference to straight base lines, the United States has always avoided their use for reasons [761] related to our national security and more recently to the current negotiations on the law of the sea."

Of course, Mr. Charney, that hasn't been the case along the Alaska coastline. They have regulated the whole thing on a base line concept.

MR. CHARNEY: I move to strike that.

THE COURT: Yes, Governor, you have just been asked to read that. If you will do so, and then your

attorney will have an opportunity to redirect examination.

THE WITNESS: "The President's ocean policy recognizes the basic national security objectives involved in our International Law of the Sea efforts, and those objections are foremost in the consideration of policies such as that concerning the drawing of maritime boundaries. In particular, the Executive Branch has considered the preservation of freedom of navigation and over-flight in ocean areas a matter of utmost importance and we have thus consistently avoided any action which would encourage expanded jurisdictional claims in such areas by the countries. Straight base lines have been misused, which means countries do close significant parts of the high seas. The United States has consistently avoided any use of straight base lines in order not to undermine our refusal to accept them as used by other countries and in order to avoid encouraging other countries to expand their claims to the high seas."

[762] BY MR. CHARNEY:

Q And could you read the first sentence of the next paragraph?

A "The maps published in April of this year were thus produced in accordance with carefully developed policy."

Q Do you know Under Secretary of State Irwin?

A I don't know him, no, not that I know of.

MR. CHARNEY: Could we have the Clerk hand Governor Egan Exhibit IT?

I would like now to offer—let's see, what exhibits do we have, 119, 120 and 121. I would like to offer those three and ask they be received in evidence.

THE COURT: Is there an objection? Exhibits 119, 120 and 121 have been offered by the Government.

MR. CRANSTON: There is no objection, your Honor.

THE COURT: They may then be marked and received into evidence.

(Plaintiff's Exhibits 119, 120 and 121 received in evidence.)

BY MR. CHARNEY:

Q Now, Governor, you discussed the lines drawn on this exhibit it?

A Yes.

Q And you said a line from—a straight line from one place to another and another. Now, that was a series of straight lines, [763] correct, from one point to another?

A Generally speaking, yes.

Q It didn't follow sinuosity of the coast, did it?

A It what?

Q The undulations of the coast, the moving back and forth following the shoreline.

A You mean it didn't go in and around the island like this, it went from point to point?

Q Yes. The answer is yes, to my question?

A Well, I don't know—it would go from one place down across—

Q Well, you picked a point on one island and then drew a straight line to a point on another?

A That was what the general outline of—the manner with which the regulations and policing has been accomplished.

Q I am asking you about this map, the lines that you have discussed on that map. They went from straight line—from a point on the shore, a straight line to the next point?

A Yes, generally speaking.

Q And went the number of miles between those points?

A Well, yes, except here in one place there was a variation near the Barren Islands, as I remember it.

Q On this map there is a variation? What do you mean by a variation?

A What I mean is you go to the map, somehow they went—came out from the Barren Islands.

[764] Q What do you mean? This map was not the map that you saw.

A No, no, I mean in looking at that map, there is an area there between—down in here (indicating) where

you might be able to say—where they didn't follow a completely straight line or something across.

Q Are you privy to all State Department diplomatic notes to foreign governments?

A No, absolutely not.

Q After the Japanese vessels were taken by you in Shelikof Strait, isn't it true that there was some confusion as to the exact location of the seizures, geographic locations?

A I don't think there was any confusion insofar as the state was concerned. They were picked up where they happened to be.

Q No, but communicating that, say, to Washington, wasn't there some telegrams back and forth trying to find exactly where?

A Not that I know of. Washington appeared confused, but we just didn't get any information out of them long before we were trying to get them to do something.

Q Were some vessels seized within three miles of the coast?

A Let's see. I think there were two vessels seized, and it happened that one was within three miles and one beyond three miles.

Q Wasn't one within three miles of a closing line of a bay?

A Well, that you would have to ask someone a little more expert [765] than I.

Q You don't know about that?

A No, not that I—I may have known it or heard people talking about it, but not—

MR. CHARNEY: Have we offered all the exhibits?

THE COURT: Yes, you have. They have been received.

• • • •

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Governor, I would like you to refer to Exhibit 120.

MR. CRANSTON: Does the Governor have Exhibit 120?

BY MR. CRANSTON:

Q In paragraph—the second full paragraph on page two you refer to the historic record. Now, I would like to ask you has anyone connected with the federal government ever discussed [766] with you the historic record concerning Cook Inlet?

A No, but I thought that that is what this lawsuit was all about, that the historic record was becoming a part of this record.

Q Now, has anyone representing the federal government ever told you that the historic record did not support Alaska's claim to Cook Inlet?

A No.

Q When, Governor, were you first asked by the United States with respect to the historic aspects of the coastline of Alaska to submit any historic data to them?

A To the best of my knowledge, the letter that was referred to here earlier that was received late in December by me from the State Department was the first—the first time that they asked for any historic data as to the bays and inlets and lakes and what-have-you along the coastline.

Q Now, that is the letter dated December 22, 1971, to you from John N. Irwin, II, that is Exhibit 121?

A Yes, that is the letter.

Q Did Mr. Yingling in his conversations with you back in 1962 ever indicate any familarity with the history of Alaska?

A No, he did not. Later, at a luncheon in Washington he made it clear there what the history record was.

• • • •

[767] Q Now, Governor, going to one other aspect of your testimony, you indicated on Mr. Charney's cross examination that you had received a communication from the President of the United States regarding the Shelikof Strait incident. Do you recall your testimony?

A No, I didn't receive a communication. It was sometime in January 1963 I was invited to breakfast

at the White House along with several other governors from the western states. At the breakfast, among those who were there was the attorney general, then Attorney General Robert Kennedy, and the President, John F. Kennedy. During the conversation that morning, the attorney general brought up the subject of the problem with the Japanese in Shelikof Strait in a friendly way. At first, that was all, and then I turned to the President [768]—the President was talking to—and I turned to the President and I said, "Mr. President, I want you to know that that action wasn't taken flaunting the authority of the United States. Those are waters of the State of Alaska," and he said, "Oh, I think you did the right thing," just like that.

Q What president was that?
A President John F. Kennedy.

* * * *

DEPOSITIONS ADMITTED IN EVIDENCE

* * * *

HARLEY ADAMS

a witness named in the annexed notice, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Would you state your name, please?
A Harley Adams.
Q What is your address?
A 2125 Stevens Way.
Q And what is your age?
A Fifty-three. I have to stop and think.
Q Okay. By Stevens Way, you mean in what town?
A McKinleyville.
Q California?
A Yes.

Q Do you have a post office box address?
A No, just 2125 Stevens Way.
Q And what is your occupation?
[2] A Ceramic tile contractor and fisherman too, you know.
Q All right. How long have you been in the fishing business?
A Oh, since 1951 or two.
Q And have you ever been engaged as a commercial fisherman in the Cook Inlet area in Alaska?
A Yes.
Q And when has this been?
A From fifty-seven on until to date, although there was some years in between that I didn't fish.
Q All right.
A This year I fished.
Q And what type of fishing have you done in Cook Inlet?
A Gill netting only.
Q And what sort of fish are you attempting to catch?
A Mainly red salmon.
Q You fish for yourself up there or do you fish for someone else?
A Yes, I have my own boat and I fish for a company boat too, for K and I Packers.
Q Generally how long do you remain in the Cook Inlet during any particular fishing season?
A Six weeks, two months. One time I was there almost four, that was 1957, in fact. I was there four months that year.
Q Do you fish elsewhere in Alaska?
A No. No.
Q I see. All right. Now, in your experience in Cook Inlet have you ever had any incidents with any governmental agency, involving any governmental agency?
A How do you mean governmental? Now, I suppose you mean Fish [3] and Wildlife?
Q Yes.
A Yes.
Q And what has—what have those or what has that been?

A Well, had a citation at one time by them.
Q All right. Do you know when this was?
A Yes, 1957. I don't recall the date.
Q What month would it have been in?
A I'm sure it was July.
Q Now, by a citation to what do you refer?
A Notice to appear.
Q I see. Could you relate the substance of the incident involved?

A Well, I was fishing in a—in the middle of the inlet out there in a rip, what they call a middle rip and of course, it's two bodies of water coming together out there, one side is clear and the other is a chocolate color and the waters is all in a turmoil there at that one point and the salmon follow on the clear side almost every time. I mean, they run right up coming into the cold water, along the dark water's edge and they follow the dark water edge and they follow up the inlet on their way to spawn, of course, that's where we try to get them.

Q All right. Now what happened at this particular time that caused you—

A (Int'g) I got tangled up with another fellow with his nets side by side and in the middle of the rip and the nets all tangled together and the Fish and Wildlife came over in a big boat, about one hundred—I don't know—between one hundred and two hundred [4] foot boat. I've even forgot the name of the boat. But, they watched me for some time. I was aware of them there but they finally motioned me to come over. I think they gave me the horn and I came over there and they gave me a little slip, notice to appear.

Q How did you know this was Fish and Wildlife?
A Well, I didn't except for the notice, that's what it said on it.
Q I see. And what specifically did it say?
A A notice to appear at some certain date but a future date and I was to receive the letter telling me when but I guess for some reason or another, I lived on the beach at—

MR. BRADLEY: I object to this as the best evidence rule.

MR. CRANSTON: You may continue and where were you told—where were you directed to appear?
A Kenai, at the Fish and Wildlife office there.
Q I see. Is that the United States Fish and Wildlife?

MR. BRADLEY: Objection, it's leading. You can continue.

THE WITNESS: Alaska Fish and Wildlife, I believe.

MR. CRANSTON: All right, but this was in 1957?

A That's right, it was a territory, wasn't it. Yes. Yes. I don't know. It was called Fish and Wildlife at that time. I suppose it still is.

MR. CRANSTON: I'd like to have marked as Defendant's Deposition Exhibit One a chart, eighty-five-0-two, United States Coast and Geodetic Survey, sixtieth edition, July 4th, 1970, [5] corrected through notice to mariners, twenty-seven slash seventy.

THE REPORTER: Marked Defendant's One.

MR. CRANSTON: All right. Mr. Adams, I'm going to hand you what has been marked as Defendant's Deposition Exhibit One and ask you if depicted within the area denoted as Cook Inlet is included in the area in which you fish?
A Yes, it is.
Q Now, I'm going to hand you a red marking pen and ask you to place a circle, better than that, an X on the map, at the location as you can best remember where you were given the citation you have just testified to.
A Yes. I remember it was on the outside of this bar. This bar extends right here.
Q By right here, you're pointing to a bar extending south of Kalgin Island?
A This buoy is marked now, it wasn't then.
Q You're talking about a buoy right above the "E" in the word Cook Inlet?
A Yes, this buoy right here. Now, I was somewhere right in this area.
Q All right. Would you put a circle in that area where—
A (Int'g) I'll put a circle. I'll include this "T", I think it's—and I feel it's very close to where I was.

Q All right. This is the area where you were when you were approached by the boat?

A Right.

Q The Fish and Wildlife?

A Right.

[6] Q And the year again that this took place, that circle that you approached in the area within that circle, was what year?

A 1957.

Q And the month again?

A July. I'm certain it was July. I fished in June but in June I was over on this side of the island. So, I don't think it was in July, red salmon.

Q All right. Now, what did you do if anything as a result of the citation which you were given, did you go anywhere?

A I didn't do anything for awhile and I received a letter by—in person—by three game wardens, walked out to my cabin and had a cup of coffee and issued me the real citation then, and then I was to appear which I did in the next couple of days or so.

Q All right. And where did you appear?

A At Kenai at—at the old fort there, that area that the Fish and Wildlife still have, I believe.

Q And did you appear before any person?

A Yes, I did, the judge.

MR. BRADLEY: I object to that answer as being a conclusion as to the nature of the person he appeared before.

MR. CRANSTON: Were you informed that this man was a judge?

A No.

Q How did you know he was a judge?

A It was the courtroom.

Q I see.

A So, I assumed he was a judge.

[7] Q Where was he, where was this man seated in the courtroom?

A I'll have to think. Well, he was up front maybe like this and I was back here and—

Q (Int'g) By like this, what do you mean, he was seated at a table or on a bench?

A Yes, he was down on a table with a chair and a table and—

Q (Int'g) I see.

A And asked me to plead, which way I plead, guilty or not guilty. So, I assumed he was the judge.

Q All right. What did you do when he asked you this?

A Well, I'm not sure how I pleaded. I believe I pleaded guilty though, and, no, I really can't say.

Q Do you know what—

A (Int'g) I don't know whether I pleaded guilty or not guilty.

Q All right. Let me ask you this question, what did they say you had done wrong, what were you supposed to have done?

A Violated a code in the—in the Fish and Wildlife Code Book, that it's illegal to fish within six hundred feet of another boat.

MR. BRADLEY: I'll object to that answer.

MR. CRANSTON: I see. All right. Did you explain to the judge when you were before him what the circumstances of the situation were?

A Yes, I told him.

Q What was your explanation?

A That we had gotten—the rip had come on us. These rips move pretty fast and I didn't see it coming and neither did the other fellow and it just sucked us right on in and together, why, [8] our boats—I was down at one end of the nets and his nets was passing me up and of course, the cork lines were all ripped in together and the fish were hitting it and tying them up and we had some time getting them out. In fact, it took several hours to clear them.

Q And what was finally done with the matter?

A The judge said he was a fisherman and had been in the same circumstances many times and the case was, I don't remember whether he gave me a fifty dollar fine—

MR. BRADLEY: (Int'g) I object to—

MR. CRANSTON: (Int'g) That's all right, just keep testifying.

MR. BRADLEY: (Cont'g) —the judge's disposition.

THE WITNESS: The judge's disposition?

MR. BRADLEY: I'm just objecting for the record.

THE WITNESS: I see.

MR. CRANSTON: Would you just say what you know, continue testifying to what—

A (Int'g) The judge said the case was dismissed, that I wasn't to be fined.

Do you have the record of that deal to see whether I did have a fine or not and whether he dismissed it? I know I didn't pay anything.

MR. CRANSTON: All right. Would you mark this letter dated July 18th, 1957, addressed to Harley Adams, Coho, Alaska from Charles F. Connelley, Junior, Fishery Management Agent, as Defendant's Deposition Exhibit Two, please.

MR. BRADLEY: The government reserves any objections [9] it might have to the introduction of that in trial.

THE REPORTER: Number Two, counsel.

MR. CRANSTON: Yes.

Mr. Adams, I'm going to hand you what has been marked as Defendant's Deposition Exhibit Two and ask you if you recognize this?

A Yes, this is it. This is the one.

Q All right. What is this, what is that Exhibit Two?

A Well, this is the letter that the wardens delivered in person. They said they had sent me one out but I never got it, see. So, I did receive this one, so, I appeared on this date.

Q All right.

A That was supposed to be the twenty-second, I believe it said.

Q This is a copy of the letter you testified to earlier as having been handed you by the wardens?

A It looks like it.

MR. CRANSTON: All right. I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

• • • •

[12] Q So, you were on this rip for some time before?

A I'd say probably between three hours, about that time.

Q So, they could have initially observed you somewhat much further down the rip?

A Well, no, they couldn't see what I was doing.

Q Well, they could have at least seen your boat initially?

A They could have seen the boat but they couldn't tell until they got within a few hundred yards that we were tangled, you know. Of course, the boats weren't together. The nets were together.

See, we've got nine hundred feet of net on there, six hundred fathoms. I mean, just one hundred fifty fathoms, nine hundred feet.

Q At least the first time that they observed your boat you might have been much further down the rip?

A We could have been, depending on which way the tide was going.

• • • •

[13] Q In 1964 to the present date it's fair to say that you did not notice enforcement boats in Cook Inlet?

A I didn't have any encounters with them myself.

Q You didn't notice them in the inlet?

A No, I didn't notice them.

• • • •

[2] JIM H. BRANSON

having been first duly sworn on oath, testified as follows;

DIRECT EXAMINATION

BY MR. CHARNEY:

• • • •

[5] Q Have you ever seen Canadian boats fishing in Cook Inlet?

A Yes.

Q Did you see them and realize that they were Canadian while you were in enforcement?

A Yes, I did.

Q Were you patrolling at the time?

A Yes.

Q When was that?

A It would have been either in late June or early July of 1952.

* * * *

[6] A Not that day, and I don't believe there had been any bad weather for the preceding several days.

Q What was your purpose for being there when you saw this ship?

A I was enroute on an aerial patrol from the Homer-Seldovia area towards Kenai and Kalgin Island.

Q In the air?

A In the air, yes.

Q Do you know where the ship was located?

A It was roughly in the middle of Cook Inlet at about the latitude of Ninilchik.

Q How do you know this?

A Well, visibility that day was such that we had good visual location of our position.

Q Was it more than three miles from shore?

A Yes.

Q How do you know this?

A Well, it was pretty well out in the middle of the inlet, and the inlet there is much over six miles wide. It must be almost thirty miles wide.

MR. CHARNEY: I have here U.S. Coast and Geodetic Chart No. 8502, 16th Edition, dated July 4th, 1970, corrected by notice to mariners 27/70. Would the court reporter please mark this as Exhibit 1 to the deposition?

(Deposition Exhibit 1 marked.)

[7] BY MR. CHARNEY:

Q I show you now, Mr. Branson, Exhibit No. 1 to this deposition, which I've previously identified, and does

it show the area on which you located that Canadian vessel?

A Yes, it does.

Q I give you a red pen and ask you to mark with an "X" the location of that vessel as you saw it.

A It was well offshore, pretty much in the middle of Cook Inlet at about the latitude of Ninilchik, in this (indicating) area roughly.

MR. CHARNEY: The witness has put a red circle, a large red dot, between the "E" and the "T" in "Inlet" of "Cook Inlet." I'll mark that as "A" and put an arrow to it.

BY MR. CHARNEY:

Q Did you see that ship at any other locations?

A I don't recall that I did, no.

Q Did you do anything about the presence of that ship?

A No, except to note it either mentally or in my field diary, I can't remember which.

Q Did you look for your field diaries?

A I searched for my field diaries for that period and have been unable to find them.

Q What did you do?

A We continued the patrol, and the next time I communicated with the Anchorage office, I asked them what the jurisdic- [8] tion, or what the deal was with Canadians fishing in the lower inlet.

Q And what were your instructions?

A My instructions—

MR. CRANSTON: My objection is as to hearsay on this. You can go ahead with it. I'll just note the objection.

BY MR. CHARNEY:

Q Were you given instructions as to what to do with this vessel that you saw?

A No, I was told, I'm sure, not to do anything about this vessel, and I was given to understand that Canadian vessels fishing more than three miles offshore in the inlet

were normal, and not to be bothered. They weren't in violation.

Q And this is the way you conducted your patrols in the inlet after that?

A Yes.

Q These were official instructions to you?

A Yes.

Q Do you know a Howard Baltzo?

A Yes, I do.

Q Might he have been familiar with this incident?

A Possibly he may have. He was stationed in Juneau at the regional office at that time.

Q Was he your superior?

A No, he was not my direct line superior.

[9] Q But did he have supervisory powers over you in your enforcement activity?

A Only indirectly.

Q What was his position in relation to yours?

A He was part of the regional office staff, and I cannot recall just what job he had at the time.

Q How about a Mr. Swanson?

A Mr. Swanson was in the enforcement division as assistant chief, and did have direct line supervision over me.

Q Might he have known of this incident?

A It's possible.

Q Do you know if the other enforcement agents were informed of this position as to foreign vessels in Cook Inlet?

A I'm quite sure the agents in Anchorage with whom I worked were aware of this position.

Q Were these instructions ever changed?

A No.

Q Do you recall ever seizing or boarding an American vessel inside Cook Inlet below Kalgin Island, that was more than three miles from shore?

A I don't believe I ever made any arrests below Kalgin Island, but I did board gillnet vessels in the area below Kalgin.

Q What do you fish for with gillnet?

A Salmon.

Q Prior to your sighting of that Canadian vessel, had the [10] question of the limits of your jurisdiction from the shore ever arisen?

A I don't recall if they had.

Q Do you recall being given any guidance on this?

A I don't recall any specific guidance.

Q Were you ever told that all of Cook Inlet were waters of Alaska?

A No.

Q Was it standard procedure to check with your headquarters in cases such as the Canadian vessel?

A In any case where I had a question of jurisdiction or how I should conduct my duties, yes.

Q I'm going to go on to other areas, such as Shelikof Strait and Bristol Bay.

MR. CHARNEY: I intend by this not to waive our objections as to its relevance, but since we are pretrial on discovery and don't know what the decision of the court will be as to its relevance, I'm going to ask these questions against any contingency that might arise.

MR. CRANSTON: Just for the record, I don't stipulate to any waiver. I will reserve any objection I might have, or any argument I have as to what the effect of these questions are for a later time.

BY MR. CHARNEY:

Q Are you familiar with Shelikof Strait?

[11] A Yes.

Q Have you ever seen foreign vessels fishing in Shelikof Strait?

A Yes, I have.

Q Do you recall arresting or seizing foreign fishing vessels fishing more than three miles from shore in Shelikof Strait?

A No, I never have.

Q What are the instructions as to jurisdiction over foreign vessels in Shelikof Strait, what have they been in the past, as you've known them?

A Well, currently, the instructions are to seize any foreign vessel fishing within twelve miles of either shore of Shelikof Strait, except for Canadian vessels fishing

for halibut, which can fish up to within three miles of either shore. Prior to 1967 in the contiguous zone law, it was three miles for all foreign vessels.

Q And you have seen vessels fishing in these areas?

A Yes.

Q Have you seen foreign vessels fishing roughly in the triangular area of a line from Cape Elizabeth, to Cape Douglas, to the Barren Islands, enclosed within that triangle?

A I've seen Canadian halibut boats in that area, as well as in other areas of Shelikof Strait, and I've seen Russian trawlers fishing in that particular area.

[12] Q Was this on patrols?

A Yes.

Q And did you leave them alone, or did you—

A Yes. The Russian trawlers, in the specific case I recall, were approximately six to seven miles offshore. This was prior to 1967.

Q Are you familiar with Bristol Bay?

A Yes.

Q Have you seen foreign vessels fishing in Bristol Bay?

A Yes, I have, of four nations, the Soviet Union, Japan, The Republic of Korea, and Canada.

Q How close are they allowed to fish without being—

A Dependent upon the fishery and nationality, it's either twelve miles or three miles offshore.

Q And you've seen them fish near those limits?

A Yes, I have.

Q Was this on patrol?

A Yes.

Q And have you left them alone?

A Yes.

Q Would you consider Bristol Bay a traditional fishery of foreign vessels?

A I would consider it so in the case of the Japanese, probably.

Q Do your patrols take you more than three miles from shore [13] outside of any bays, inlets or straits?

A Quite regularly.

Q Do they take you more than twelve miles from shore?

A Frequently.

Q While in those areas, do you have any interest in fishing vessels?

A If I understand, your question is in those areas more than twelve miles offshore?

Q Yes.

A Yes, depending—we're very interested in all fishing activity out to distances of as much as 100, 150 miles from shore.

Q What for?

A In some cases, we have treaties or agreements with the nations involved in these fisheries, governing that particular fishery, or area.

Q In other cases?

A In other cases, we are trying to establish what the fishing pattern is, the catch, the methods used, as much as we can about that particular fishery.

Q Is this an official activity?

A Yes.

MR. CHARNEY: I'd like to offer Branson Exhibit No. 1 into the record of this deposition. I have no further questions.

CROSS EXAMINATION

[14] BY MR. CRANSTON:

* * * *

[39] Q Just pursuing it a little further, then, suppose we toss in the period after statehood. Would you answer still be the same?

A I'm not sure whether the Japanese fleet that caused such a furor in the early '60's got up that far or not. They were in Shelikof, or close to it.

Q Since that time, the Shelikof Strait incident in 1961, I believe, isn't that the time?

A It must have been approximately that.

Q Have the Japanese entered either Shelikof Strait or Cook Inlet?

A I have seen Japanese ships in transit through Shelikof Strait, but never in Cook Inlet. This is Japanese fishing ships, particularly—specifically.

Q I see. In transit, you mean from what, Bristol Bay and heading for the gulf, something like that?

A I have no idea where they came from or where they were going, but they were in Shelikof Strait traveling.

Q You are not aware that they ever entered the area bounded by a line from Cape Douglas through the Barren Islands on to Cape Elizabeth?

A I've never seen one in there.

Q And what about vessels of any other nation?

A North of a line between Cape Douglas and the Barren Islands, [40] no.

* * * *

[42] Q Have you seen ships of any other nationality?

A The Canadian fish regularly through Shelikof Strait for halibut.

Q I see. All right, but now, again, this instance that you referred to in the Russian event is the only incident involving a non-Canadian halibut vessel of which you are aware, is that correct, in the area north and generally west of Shuyak Island?

A That's the only time I recall having seen a foreign vessel fishing other than a Canadian.

Q Have there been any reports of which you are aware made by others?

A I've had reports of Japanese and Russian fishermen in that area from members of the American fishing fleet. I've never been able to verify them.

Q Have you memorialized these reports in any form of document in writing?

A I'm not sure. We may have one or two of the incidents.

Q They would be on file in your Kodiak office?

A They should be.

[3] JARED CARTER,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please?

A Jared G. Carter.

Q What is your address?

A 3539, Nottingham Street, Arlington, Virginia.

Q And your age?

A Thirty-six.

Q And what is your occupation?

A I am the Deputy Director of Ocean Affairs, Department of Defense.

Q Do you have any connection with the Legal Adviser's office to the Secretary of State?

A Not now.

Q I see. Would you describe to me your past Government occupations, please?

A Within the last four years I have been most recently the Assistant Legal Adviser for Economic Affairs for about two [4] years, and prior to that I was the Assistant Legal Adviser for Special Political Affairs and before that the Special Assistant to the Legal Adviser.

Q Now, those past three occupations have been—

A In the Department of State.

Q In the Department of State?

A Right.

Q And when you are talking about the Legal Adviser, you are referring to the Legal Adviser of the Secretary of State, is that correct?

A Right.

Q All right. Aside from those three particular occupations, have you had any other responsibilities with respect to the Federal Government?

A I was a Supreme Court Law Clerk after law school, 1962, 1963 and I was in the military service from 1956 to 1959.

Q Where was your legal training?

A Stanford University.

Q You have your Bachelor of Laws Degree from Stanford?

A Correct.

Q Or J.D., as it may be?

A I haven't spent the $50 for that J.D.

Q Now, on July 3rd, 1969, what was your occupation?

[5] A I was the Assistant Legal Adviser for Special Political Affairs.

MR. CRANSTON: I would like to have this document which is a letter dated July 3, 1969, from the Legal Adviser of the Secretary of State to Mr. Shiro Kashiwa, Assistant Attorney General, marked as Deposition Exhibit 1, please.

(Letter marked Defendant's Deposition Exhibit No. 1 was marked for identification.)

BY MR. CRANSTON:

Q All right, I am handing you what has been marked as Defendant's Exhibit 1 for the purposes of this deposition. I am going to ask you to look it over and tell me if you are familiar with that document?

A Yes, I have some recollection of it.

Q All right. Would you indicate to me what the basis of your familiarity with this letter is?

A This dealt with a subject matter that fell within the province of my office as Assistant Legal Adviser for Special Political Affairs, so my office prepared this letter for the signature of the Legal Adviser in consultation with him.

Q So, when you speak of "your office," you are telling me that this letter was prepared under your supervision or more [6] specifically, was it prepared by you?

A I can't, with any assuredness, answer that question for you. What I can say is, it certainly had my detailed

examination and, undoubtedly, editing before it went out. To the best of my recollection, the actual work on the letter was done, not by me, but by another person who worked for me.

Q I see. Could you tell me who the name of that person would be?

A Peter Wallin or Pat King. I had two people working for me who were both working on this general subject.

Q How do you spell Wallin's last name?

A W-a-l-l-i-n.

Q And the other individual was Pat—

A King. Patricia King.

Q That is a girl, then, I take it?

A Right. She was a summer intern from Harvard working with us that summer.

Q Can you tell me where Peter Wallin is located at the present time?

A He is working in Los Angeles with some kind of a publicly funded—I think it is an OEO Legal Services operation, but I wouldn't be positive.

Q What would his age be?

[7] A Twenty-eight, twenty-nine. Maybe thirty. I just really don't know. But he was a fairly young guy, two or three years out of law school, at that time.

Q He is a graduate of law school and has a law degree?

A Right.

Q Did he have any middle initial or any other identification that you might be aware of?

A I don't remember. It has been two and a half years since I dealt with him and I just don't remember that. But that information would be available in the Legal Adviser's office.

MR. CRANSTON: Mr. Charney, is there any objection to my obtaining all the possible information I can respecting Peter Wallin?

MR. CHARNEY: I think we can locate him.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q Now, could you give me some indication of where Patricia King might be at the present time?

A The last I talked with her, she was a Special Assistant to the Chairman of the Council on Equal Employment Opportunity here in town. That may not be the correct name of it.

[8] Q Did she have a law degree?

A She did not at that time. She had completed two years of law school and was in the course of her third year.

Q Do you know if she does now?

A She does now.

Q And is her capacity as Special Assistant to the Chairman of this Council a legal position?

A No, I don't believe so, but I am not intimately familiar with how the Council operates.

Q But she is employed by the Federal Government so far as you are aware at this time?

A Right.

Q And Mr. Wallin would also, so far as you are aware, be employed by the Federal Government?

A I just don't know how those operations work. My guess is now, that there is some Federal funding but it is not a Federal Government employment. I just don't have any knowledge of it.

Q With particular reference to Exhibit 1, did you participate in any of the research which formulated the background for that letter?

A No.

Q Did you—

[9] A I reviewed the work but I didn't do any research.

Q What was the nature of the work that you reviewed?

A Drafts of the letter and then discussing their sources for making the assertions.

Q Did you discuss any sources other than those which are discussed in this letter?

A Yes.

Q And what other sources did you discuss?

A We did some work, I forget how much earlier, but somewhat earlier than this letter in conjunction with answering some interrogatories and requests for admissions in this same case. And we did some work in conjunction with that.

Q But so far as the documents and public records which formulated the conclusion of this letter, specifically, do you know if any other matters were considered except the Juridical Regime, the letter written by Abram Chayes and the United States note of March 6, 1958, which is reported at 38 Department of State Bulletin, 461?

A So far as the Juridical Regime is concerned?

Q Well, so far as the documents which form the basis for the conclusion of this letter. Were these the three items which were considered by the Legal Adviser's office in reaching the conclusion that was reached?

[10] A There were certainly others, like the Convention on the Territorial Sea and the Contiguous Zone and Whiteman's Digest and other legal sources that were readily available to my lawyers which were also considered. So, if your question would exclude the normal kind of sources that are available to a lawyer, then, my answer would be no, because those kind of sources were considered. Also—

Q Let me just interrupt at this point. By "Whiteman's Digest," to what do you refer?

A There is a publication called "Whiteman's Digest" on international law that is edited by Marjorie Whiteman who was formerly an employee of the Legal Adviser's office. It is now about a 14-volume work.

Q I see.

A And it contains materials on almost any issue of international law.

Q Would it have contained any material specifically with reference to activities of the United States in the waters of Alaska and specifically with regard to its activities in Cook Inlet?

A I doubt it, but I don't know the answer to that. If we had not had any incidence in that area, then

there wouldn't be any material in it, because what it builds on is the record [11] of dealing with past incidences and the conclusions that were reached in regard to those and then published in a digest of those experiences.

Q Would it be normal for Whiteman's Digest to contain references to such matters as activities of the United States Fish and Wild Life Service in a particular area?

A Probably not, unless they were the source of an international dispute of some kind.

Q All right. I interrupted you. You were continuing on.

A Right. In preparation for the interrogatories and a request for admissions, I also recall that my office levied a request on other sources, the Historical Office in the Department and the Geographer's Office to consider those requests for interrogatoriees, and I don't have any knowledge of what those offices may have examined in detail in preparing their answers. But, we did rely to some extent on their examination, so I can't tell you that the final answer depended only on certain documents.

Q Now, with reference to the preparation of the answers to the request for admission and interrogatories, were the same individuals within the Legal Adviser's office responsible for preparing those answers? I refer to Peter Wallin and [12] Patricia King.

MR. CHARNEY: At this point, I would like to state an objection that we are getting into privileged material and that is of attorney-client correspondence and work in preparation for these answers to interrogatories. I will for the moment allow this witness to answer these subject to my objection, of course, until we get to a point where I feel that I want to invoke the privilege or refuse to allow him to disclose things that I would consider prejudicial to us or in balancing the values I would rather he did not answer.

MR. CRANSTON: But you are allowing him to answer this?

MR. CHARNEY: At this point, I will.

THE WITNESS: Yes, to the best of my recollection, they worked on both.

BY MR. CRANSTON:

Q So far as you are aware, these two individuals also were responsible for the preparation of those answers, is that correct?

A Yes.

Q Is there anyone else with whom you are aware who may have also been involved in the preparation of those answers from the Legal Adviser's office?

A As I recall, the Deputy Legal Adviser, Murray [13] Bellman, was really performing more of the supervisory functions on those.

Q Can you spell his name?

A B-e-l-l-m-a-n.

Q And his first name is Murray, M-u-r-r-a-y?

A Yes.

Q Do you know where he is?

A He practices law here in town but I couldn't give you the name of the firm.

Q Now, just so I fully understand the relationship between the work which resulted in the answers to interrogatories and the requests for admissions, it is your testimony that that research, and information derived from that research, also aided in the formulation of the conclusion contained in the letter of July 3rd, 1969?

A Yes.

Q Now, are you aware of what particular information resulting from the research with regard to the interrogatories and requests for admission was used to reach the conclusion contained in Exhibit 1 to this deposition?

A Not with any degree of certainty. I do know that the materials quoted here, that is the reliance on the study by the United Nations Secretary General, and I believe, [14] though I am not confident of this, that that research also turned up the example of the Great Bay case. Also, it revealed a certain absence of information which under the test enunciated here is very significant to the conclusion. So—

Q By "absence of information," could you detail that with a little more specificity? Information as to what and where?

A The absence of the United States making certain assertions of jurisdiction over the area and the absence of any indication of foreign governments' attitude about the area.

Q I see. Do you know with any particular detail what sources available to the United States were researched in order to prepare the answers to these interrogatories and requests for admissions?

A No, I don't. I can assume that Whiteman's Digest and these other sources that lawyers look at were gone into in considerable detail because these were competent people. But beyond that, I don't really have any specific knowledge.

Q And you feel that perhaps Peter Wallin and Patricia King would have this information, if anyone does?

A My guess is that they don't recall too much about it right now, but if anybody does recall exactly the steps [15] that were taken, probably they would.

Q Would you be able to tell me if in preparation for this letter, which is Exhibit 1 to this deposition, and any of the material upon which this letter was based during your period of responsibility with the Legal Adviser's office, the Archives of the United States were completely searched in order to determine the activities of the United States in Cook Inlet and the disputed areas?

A I don't know for sure, but I don't think so because I remember that we answered some of the interrogatories by saying that that would require complete Archival research, which we weren't going to undertake. So, from that fact, I inferred that they weren't comprehensively examined.

Q Do you know or are you aware of any portions of the records contained in the Archives of the United States and any Federal record center which were searched and relied on in order to formulate a basis for the conclusion of this letter?

A I don't. What the Historical Office did or what the Geographer did in that regard, I just couldn't testify to because I don't know.

Q And you feel that if anybody, again, would know the answer to that question, it would most likely be Peter Wallin and/or Patricia King?

[16] A I doubt that they would know the answer to that question because I am sure they didn't do any of that research and they probably just to a certain extent accepted the conclusions of people in other offices rather than going into too great detail about what they did or didn't do in arriving at them.

Q How could I or who would I go about to run down the amount of research that was done and who did the research in order to form the basis for the conclusion in these letters insofar as the Archives and historical records are involved?

A Let me confer with my counsel a moment.

MR. CRANSTON: Yes.

(Discussion off the record.)

THE WITNESS: The only way I can think of is to go to the Historical Office and the Geographer's office and ask them.

BY MR. CRANSTON:

Q All right. Now, by "Historical Office," do you mean the Historical Office of the Department of State?

A Right.

Q And who in the Historical Office would be the person I should go to?

A If I were you, I would start with the boss, whoever he is, and ask him. I just don't remember who did this work [17] in the Historical Office.

Q All right. What was the other office?

A Geographer's.

Q Is that also the Geographer's Office contained within the Department of State?

A Right.

Q Is that the office wherein the Geographer of the United States is located?

A I don't think so. He must be over in the Interior somewhere.

Q I see. But there is a Director of the Geographer's Office here, or what would the position be?

A That is right. The situation there is that the fellow who used to hold it during this period of time has retired.

Q What is his name, do you know?

A Edsel Pearcy; E-d-s-e-l, I think. P-e-a-r-c-y or c-e-y.

Q He is retired. Do you know where he is located?

A He teaches out in some state college or city college in the L.A. area.

Q You know nothing else regarding the name of the college where he might teach. You say it is a teacher's [18] college?

A I am sure Fred Hodson, the present Geographer, would know where he is.

Q Spell that man's name, please.

A I thing it is—I can't remember the guy's name. It is in the phone book. But the present Geographer, whoever he is, and that is ascertainable from the telephone book here of the Department of State.

Q He would be the Director of Geographer's Office for the Secretary of State, the present occupant of that office?

A Right.

MR. CRANSTON: Mr. Charney, is there any objection to making these individuals, if they are employed by the Federal Government, available to the State of Alaska in order that I may pursue the matters with them which have been discussed in this deposition?

MR .CHARNEY: I haven't thought about it extensively. My initial reaction is yes, but I will think about it further.

MR. CRANSTON: We will discuss it, then. There is nothing we can make a record on at this point?

MR. CHARNEY: No.

BY MR. CRANSTON:

[19] Q Did Mr. Meeker, himself, whose signature appears on this letter, participate in any of the actual work which was done in order to finalize this letter?

A All I can do is answer on the basis of my familiarity with three years of working closely with him and because I don't have any specific recollection of how this letter was approached by him, I would say that he would have required detailed explanation of what was here and why it is here and asked a series of questions about it and probably have done a small amount of editing of the letter before signing it; but that he would not have gone back and done any research on the question, but rather would have accepted the basic work done by the people in the office after talking with them awhile.

Q Did he question you at all with respect to this letter?

A I say I don't recall specifically our talking about this letter, but I am sure he probably did. I probably went into his office with Wallin or King, whichever one had the most details on it, and we probably sat down and talked about it for fifteen minutes.

Q Apart from your testimony now, you cannot recall specifically what may have been discussed or you can't even [20] remember if, in fact, such a discussion took place?

A No, I cannot.

Q I see. If he did not discuss the content and conclusion of this letter with you, Peter Wallin or Patricia King, is there anyone else with whom he may have discussed it?

A Well, he may have talked to one of the deputies when none of us were present.

Q This would most likely have been Murray Bellman?

A Yes.

Q But you are not aware that Mr. Bellman did any independent research of his own, are you?

A No, I am not aware.

Q Did you think he did?

A I doubt it. He had a number of people to supervise and probably did not go out and do any separate, independent research.

Q So, in effect, actually, Mr. Meeker's work with regard to this letter is simply to determine in his own mind what was done and most likely to conclude that what was done in its preparation was sufficient and that it was worded the way he would want to have it worded and then he signed it, is that about it?

A I say I don't know, but my guess it that that is [21] probably about right. He may have at some time in his career in the Legal Adviser's office been a real expert on historic waters for all I know. I don't know whether he did anything different, but that would be the normal course of how the Legal Adviser would deal with this kind of a problem.

Q But you aren't implying he was an expert on historic waters?

A No, no.

Q He is in Rumania now, is that correct? He is the Ambassador to Rumania?

A Yes.

Q All right. We have talked about interrogatories, and there have been several interrogatories or sets in this case, and are the interrogatories to which you refer ones served by the State of Alaska which contained such questions respecting what would be done if foreign vessels should appear in Cook Inlet or if foreign aircraft should appear off the air space of Cook Inlet. Do you recall specifically what particular interrogatories you were referring to?

A I think there was a set of six requests for admission and twenty interrogatories. Now, they may have had those questions in them but I doubt that the State Department as contrasted to, say, the Coast Guard or the Navy or the Air [22] Force would have answered those specific ones that you are referring to.

Q Just to identify them with a little more particularity, do you recall any of the questions that were contained, say, in the requests on one hand and the interrogatories on the other?

A There were a number of questions having to do with the headland to headland whether jurisdiction had been exercised over the waters inside the closing line

from headland, and questions as to what the United States considered to be the closing line in that bay.

* * * *

[23] Q Is there a differentiation in the file in the Office of Legal Adviser between material contained in it which was not used to respond to this Exhibit 1 to this deposition and material contained in it which was used to respond to any request for this letter? Do you follow my question?

A No, I don't understand what you mean by "differentiation between."

Q I am trying to break down any possibility of distinguishing within that file as to material which was used to form a basis for Exhibit 1 to this deposition and material which was not used to form a basis as Exhibit 1 to this deposition. Was there such a differentiation? I can't make myself clearer.

A Yes, I think I get the thrust of your question, and I will just say that to my recollection there is no conscious sub-filing on the various parts of the case over its history within that file, and that by looking at an index of it, you wouldn't be able to say that this or that was relevant to one or another part of the history of the case. As a matter of fact, it is a pretty sloppy job of filing that was done, not [24] only in this case but in other subjects. So, it is very hard to give you an answer other than, no, there was no differentiation made.

* * * *

[29] Q In the drafting of this letter which is Exhibit 1 to this deposition, did you review independently the conclusions of Mr. Chayes in his letter of May 3rd, 1962?

A I read his letter and the letter coming in to him. I didn't do independent research to determine whether he was right or wrong. I just accepted it.

Q All right. Did you discuss that letter with either Mr. Chayes or anyone in the Office of the Legal Adviser who had [30] previously been with the office who may have had any responsibility for that letter?

A I don't recall my discussing it with him.

Q Do you think that anyone else under your supervision or who had responsibilities to the Legal Adviser did discuss it?

A I don't know. It would have been normal and reasonable to have gone and discussed the matter with Ray Yingling who, I think, was still in our office at that time. He wasn't working on this subject matter but he had worked on this subject matter earlier, and whether that was done, I just don't know.

Q Again, if it had been done, would it most likely have been done by Peter Wallin and Patricia King?

A Yes, I think so.

Q To your knowledge, was the letter of July 3rd, 1969, Exhibit 1, disseminated or distributed to any other person, agency, government, what-have-you, except Shiro Kashiwa?

A I am pretty sure a copy would have been given to the Interior Department. Whether it would have been given to anyone else, I don't know. But the normal procedure would be to give a copy of the letter to whatever Government agency has an interest in the subject. They are affected by this kind of [31] conclusion.

Q Would it be the normal procedure to distribute a copy of this letter to any other person or entity, including governments apart from agencies of the United States?

A No, unless they asked. If they asked we would give it to them.

Q Would it in the normal course of events have been sent or distributed to any foreign government?

A No.

Q Who in the Legal Adviser's office or within the Department of State would know the persons, agencies and governments to whom this letter has been distributed, if it has?

A I don't know. Probably no one. If I had been in my office and anybody had asked me for a copy of it, I would have sent it to them and I would not even have made a record of it, probably.

Q All right. If it had been sent, say, to a foreign government, would it be most likely that either a record

of the request, say, in the form of a letter or a record of the distribution of the letter, Exhibit 1 to this deposition, would be made?

A No. Most likely what would happen is some young [32] officer from the embassy that you saw once in a while would be talking with you and say, what has been happening in such and such an area, and you might in the course of conversation say you had written an opinion letter on such and such a topic and he would ask you verbally for a copy and you would give it to him.

Q But you recall having had no such conversation with respect to this letter?

A I can recall no such conversation.

Q And is it most reasonable to assume there was no distribution of this letter to any agency other than Interior?

A That would be the most reasonable assumption, yes.

* * * *

[3] ABRAM CHAYES, having been sworn, in answer to direct interrogatories by Mr. Cranston, testified as follows:

Q Will you state your name, please?

A Abram Chayes.

Q Your address?

A 3 Hubbard Park, Cambridge, Mass.

Q Your occupation?

A I am a Professor of Law at Harvard.

Q Your age?

A 49 years old in a month.

Q Now, have you ever been employed by the offices of Legal Adviser to the Secretary of State?

A I was that for three years.

Q What years?

A February, 1961, to January of 1964.

[4] Q I am going to hand the reporter a letter dated May 3, 1962 from Abram Chayes, the Legal Adviser of the Department of State, addressed to Frank J. Barry, Solicitor of the Department of the Interior.

A Yes.

Q I ask that it be marked as Exhibit 1 to this deposition.

MR. CHARNEY. No objection.

(Photostatic Copy of Letter to Frank J. Barry, Solicitor of the Dept. of Interior, dated May 3, 1962, a 3-Page Document, Signed, "Sincerely yours, For the Acting Secretary of State: Abram Chayes, the Legal Adviser," marked Defendant's Exhibit 1 and Received in Evidence.)

THE WITNESS. Is this the same letter that accompanied the subpoena?

MR. CRANSTON. Yes, yes.

Q Now, I am going to hand you what has been marked Exhibit 1 to this deposition and, as I stated before, it is a letter dated May 3, 1962, from you to Mr. Barry, and I ask you if you recognize this letter.

A Yes. That appears to be a copy of the letter that I sent in my official capacity as the Legal Adviser of the Department of State.

Q Who did the research and the preparation necessary for the writing and the drafting of this letter?

A I believe the letter that we wrote refers to a letter [5] from Mr. Barry dated April 17, 1962, and that was an incoming letter that is not available to me now.

This letter must have come to my desk, although I do not have any recollection of it.

I assigned the matter to Mr. Yingling, who was the senior attorney, I think he was an Assistant Legal Adviser, in charge of special political affairs and that included the law of the sea matters.

He was a long-time member of the Legal Adviser's Office and had specialized in the law of the sea matters for many, many years, and I did assign this matter to him for investigation.

Q All right. Did you do any of the research or the other work necessary in order to reach the conclusions reached by this letter?

A I did not do any of the basic research.

I had a conference with Mr. Yingling before he began work and reviewed the issues and outlined the scope of the research that might be necessary.

Then, since I was the head of the office, most of the work had to be delegated to subordinates and Mr. Yingling carried out the work and prepared a draft of this letter.

There was undoubtedly a background memorandum, although I do not have any recollection of the back- [6] ground memorandum.

I met again with Mr. Yingling to review his data—draft—and I questioned him about the scope of the research and what he had done.

I was satisfied that the draft was a proper expression of our views and I signed the letter.

Q Do you recall any directives written, or oral, that you may have given Mr. Yingling relative to what he should research in order to draft this letter?

A I obviously wanted him to look into the cases as far as the rules of the law of the sea go.

He knew as much about them as anybody, and, of course, I knew something about them myself.

I asked him to look into the records of the department, and other records that might show assertions of jurisdiction and sovereignty in the Cook Inlet.

Now, over what period of time that was, I am indefinite but the letter reflects that he looked into the National Archives, and although I do not independently recall telling him to go to the Archives—in fact, perhaps I do, but I am not too sure of an independent recollection of telling him to go there.

But I am sure that he had done a historical survey that would have been sufficient to disclose the factual basis for our opinion.

[7] Q When you speak of the record of the department—or records of the department, you refer to the Department of State?

A Yes.

Q Do you recall having instructed him specifically, with respect to a search of the records of any other department of the Government?

A No, no.

My general instructions were to make a search of the historical records of the United States to substantiate—form a basis for an opinion of the status of the Cook Inlet as historic waters.

Q Do you recall having—receiving any communication from Mr. Yingling or any other person under your supervision or his supervision relative to what records of the Government, either in the State Department or other departments, were in fact searched?

A Again, I have to say I do not have any independent recollection.

I am sure that Yingling reported to me periodically with word as to what he was doing; it was not too long it was a period of two or three weeks; a backup memorandum would have accompanied this letter.

As was always the case, when we prepared an [8] Opinion Letter of this kind, it was accompanied by a backup memorandum.

It would have given in detail, in some detail, the scope of the research.

Q Was it the policy of the legal advisor's office to require a backup memorandum relative to the research done in the case of a letter or an opinion request, such as this?

A I do not recall it as a formal policy. I think it was always the case that a matter of this kind, involving the position of the United States on an important issue, would have a backup memorandum analyzing in greater detail than was appropriate for general letters—the sources of the analysis and so on.

Q Do you recall specifically having seen this type of a backup memorandum?

A As I said, I do not have any independent recollection of that, but I am confident that there was one.

Q If a backup memorandum were prepared and submitted, would it normally be included within or retained within the file that would be in the legal adviser's office with respect to this particular opinion?

A I think that would—that would be for a while. At certain times, the record policies of the department

[9] would take it out and put it someplace, but it should be in the department now and available to the operations of the department.

I am sure that you could find this memorandum somewhere.

Q So, then, to sum up at this time, with respect to any written communications that you received prior to the drafting of this letter, the only one of which you are aware is the letter that you received from Mr. Barry requesting an opinion?

A Well—I am only aware of it for it was referred to in this letter, but I am confident that there was a backup memorandum or it may have had appendices and so on.

Usually, our preparation was pretty thorough on that.

* * * *

[32] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Do you recall specifically whether you, in your preparatory discussions with Mr. Yingling, that you were asked if the records of the Department of the Interior or of Fisheries and Wildlife Service be examined as background material for this letter?

A I do not recall stating specifically that they should examine the records of the Department of the Interior or the records of the Fish and Wildlife Service.

I knew, and we discussed at that time, certain problems raised by the form in which Fisheries and Wildlife regulations had appeared. That was on one or two occasions.

It possibly may have been read as applying beyond the lines that we took to be the limits of the territorial sea.

In that area we discussed the question of how those regulations should have been dealt with.

Now, I guess in the letter what we said was: You fellows know more about this than we do and you deal with them.

In fact, we knew about these regulations and [33] we discussed what their significance was and how they should be interpreted in relation to these questions.

Q Do you think the background memorandum would have discussed this or do you recall?

A I do not recall, but I would think that it very well might have.

MR. CRANSTON: That is all.

MR. CHARNEY: What were your conclusions?

THE WITNESS: It is reflected in the overall conclusions reached by the letter that they did not warrant assertions by Alaska of a claim as historical waters.

We felt that for most of the period, during which Alaska had been the United States, that the regulations were specifically limited to the territorial waters as traditionally defined.

There were one or two regulations where the draftmanship was slightly changed so that it may have been read as applying beyond that, but not necessarily.

When the anomaly was discovered, the regulations were redrafted to make it clear that we were excluding those waters—beyond the traditional limits, so that we felt that regulations, even those doubtful ones; and I do not remember the language anymore—it is [34] intricate.

We felt that even those doubtful ones could be construed as limited to territorial waters as traditionally defined.

If not, they simply represented a drafting error made by someone that was not focusing on this problem, and certainly not an assertion of jurisdiction or sovereignty beyond the traditional 3-mile limit or the Bay—the line enclosing the inner Cook Inlet at the Forelands—the headlands or somethoing like that.

• • • •

[3] Thereupon,

THOMAS J. COSTELLO,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your full name, please?

A Thomas J. Costello.

Q And what is your address?

A Present address?

Q Yes.

A 8421 Southwest, 16th Terrace, Miami, Florida 33155.

Q And what is your present age?

A 50 years.

Q And by whom are you employed now?

A By the U. S. Department of Commerce, National Marine Fishery Service.

Q And what are your present duties?

A I'm a research biologist. I'm presently in charge of the Calico Scallop investigations at the Tropical Atlantic Biological Laboratory in Miami.

Q How long have you been stationed there?

[4] A Since the fall of 1958.

Q And before 1958 were you also employed by the United States Government?

A Yes.

Q And in what capacity and where?

A Prior to that I spent two years at the Bureau of Commercial Fisheries Laboratory in Galveston, Texas. I was the chief of Gulf Fishery Investigations and the assistant chief of Gulf Fishery Investigations, one year each at that laboratory.

Q Then you say you were there from 1956 through 1958?

A Correct.

Q And then before 1956, where were you stationed?
A From 1950 through 1955 I was stationed in Alaska.
Q All right. What were your responsibilities in Alaska?
A For the first year I was the assistant to Burtell Johnson who was the biologist in charge of Bristol Bay and beginning in 1951 through 1955 I was the Fishery Management Biologist in charge of the Cook Inlet District in Alaska.
Q And you were stationed in Anchorage?
A That's correct.
Q Now, was the year 1950 the first year that you had [5] gone to Alaska?
A Yes.
Q In any position of responsibility?
A Yes.
Q Or was it the first time you had been there at all for any purpose?
A Yes.
Q And were you employed with the United States Government before 1950?
A No.
Q What particular type training have you had with respect to your specialty in marine biology?
A Well, I graduated from the University of Washington with a Bachelor of Science Degree in Fisheries in 1949.
Q I see. And did you have any post-graduate training in this area?
A I took graduate work at the University of Washington for the first two quarters of 1950, and since then I have taken graduate work at the University of Miami, 1964 and 1965.
Q I see. Now, focusing on the years 1950 through 1955; commencing in 1950 you say you were under a man who was in charge of the Bristol Bay District, is that correct?
A Just for the year 1950, that's correct.
[6] Q And during 1950, were you concerned completely with activities in Bristol Bay?

A Up until the fall of 1950. I did stop in Anchorage for a brief period, maybe—approximately now—six weeks following the work in Bristol Bay to help out in Anchorage, but I had no real official capacity. That is to say, I worked and helped put together the air base and so forth there.
Q I see. Now, before the fall of '50, when you went to Anchorage, is it a safe statement that you did not concern yourself at all with any activities in Cook Inlet or with respect to Cook Inlet?
A That's correct.
Q Then, in the fall of '50 you went to Anchorage to help with an air base construction. Was that Elmendorf?
A No, that was our own air base at Hood Lake. I was working for the government at that time.
Q During that period, did you concern yourself with any of the normal activities of your department in Cook Inlet?
A No.
Q When did you first become involved with the activities of the Cook Inlet District?
A The spring of 1951.
Q And you state that you were the management biologist?
[7] A My title was Fishery Management Biologist in charge of the Cook Inlet District.
Q Now, who was your immediate superior?
A Mr. Dick Schuman who was stationed in Juneau, Alaska.
Q Am I correct in stating he is probably deceased?
A That's right. He was killed in an aircraft accident.
Q And other than Mr. Schuman, do you know who was next in chain of command?
A Mr. Howard Baltzo. He was the assistant regional director.
Q And during this time was Clarence Rhode the director?
A That's correct.
Q Did you have any persons who were under your supervision?

A Yes, a number of persons. In the summertime, for example, I had—and this is approximately the maximum —were about 24 people that worked for me; stream guards and so forth.

Q Now, the stream guards, I would assume, confined their activities mainly to the shore and perhaps a few hundred yards offshore, did they not?

A Primarily.

Q Did you have any persons who worked farther out in the Inlet who were under your supervision, those who would [8] normally patrol the inlet on aircraft or boats?

A Not—well, I must explain. I can't answer your question yes or no.

Q Yes, please explain.

A I had no direct jurisdiction with respect to enforcement for 1951, 1952, or 1953. I was strictly the management biologist in charge of the district. In 1954, sometime during that year, and for the time I was there in 1955 I was actually placed in charge also of enforcement in the district. So for the first three years the answer is no, I didn't have anybody working in the middle of the Inlet or anybody like that, but for the last approximately year and a half, and I'm approximating now, I had people. For example, Robert Mahaffey was the person I designated as primarily in charge of enforcement under me.

Q Am I correct in assuming that he's presently deceased?

A That's right.

Q For the first three years then you had no responsibility for enforcement. Do you recall, however, any of the individuals in the district who did have responsibility for enforcement during that time?

A Well, of course, I knew all of them because we worked in what might be called a coordinated effort. That is to say [9] we informed each other. We were in the same set of offices, Holger Larsen and—

Q I wonder now if you could without going into any detail about them just give me the names of those persons

who were involved in enforcement during your first three years?

A Well, Holger Larsen was in charge of enforcement. Dave Collins who drowned during the period was also working for him. Jim Branson worked for a time in the district. Of course, there were a variety of agents that came up and worked during the summertime for enforcement from the States. These were game enforcement agents that were temporarily assigned to Alaska.

* * * *

[12] Q All right. In carrying out your duties, generally, during the time you were on the Cook Inlet District, did you rely on any written directions or instructions from anyone?

A Well, of course, we used the regular Cook Inlet regulations which we actually formulated and wrote so we were making reliance on steps that we composed ourselves.

Q Were these the regulations that were promulgated under the Fisheries Act of 1924?

A Right, the White Act. Right.

Q You relied on those primarily for direction with respect to the laws you were going to enforce, is that correct?

A That's correct.

* * * *

[15] Q All right. Just a prefatory comment: I'm asking you these questions, again, not to test your memory but we do have to make a record on some of this information and so I have to go into it in some detail. I take it that when you were on the Cook Inlet District you became quite familiar with the entire area over which you had responsibility?

A Quite familiar.

Q And did you make trips very often up and down the [16] Inlet or the shores adjoining the Inlet?

A Frequently.

Q And, generally, where would you go on your trips? Did you have any set pattern that you would follow when you made trips?

A Primarily, I would go to the places where salmon were being packed, for instance, Kenai, Homer, Seldova, and across the Inlet to the Fribrock.

Q Could you spell that for the court reporter?

A F-r-i-b-r-o-c-k.

Q And where was that located?

A That was located on the north shore, I guess, of the Inlet. I'm trying to think of the Inlet's direction, but the shore opposite from Kenai.

Q I see. Probably would have been somewhere in the vicinity of Chisik Island, perhaps?

A Yes.

Q Did you become familiar with the settlements on Cook Inlet to any extent?

A I think I was familiar with most all the settlements, yes.

Q And what was the basis for most of the settlements? What was the economy?

[17] A The settlements were primarily located with respect to the fish runs in Cook Inlet.

Q And by the "fish runs," I assume you're referring to primarily salmon?

A Yes.

Q Could you explain that. In other words, what was the significance of their location relative to those runs?

A Well, since these are anadromous fish and they ascend river systems. You will note that the most of the packing plants were located near the mouth of rivers. For instance, the Susitn and the Kenai River are important areas.

Q I take it also that in your activities you became familiar with the laws, regulations, and treaties which govern the operation of the fisheries in Cook Inlet?

A Yes.

Q And did you feel that this was necessary in order for you to carry out your duties there?

A Yes.

MR. CRANSTON: I'm going to ask the reporter to mark as Deposition Exhibit 1 United States Coast and Geodetic Survey Chart 8502, 16th Edition, July 4th, 1970, corrected through notice to Mariners 27/70.

[18] (The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q Now, Mr. Costello, I'm going to hand you what has been marked as Deposition Exhibit 1 and ask you if this represents generally or at least included on that chart is the area over which you had responsibility while you were on the Cook Inlet District? Not the entire chart, but is the area over which you had responsibility included on that chart?

A Is the area included in this chart?

Q Yes.

A Yes.

Q And I take it that you are generally familiar with the area designated as Cook Inlet on this chart?

A Yes.

Q With reference, if you can, to points on the chart, could you delineate the area of Cook Inlet over which you exercised your responsibilities? In other words, where did you general patrol? For instance, down to what portions, if you can describe a line?

A Patrol. I personally?

Q Or those under your supervision.

A Well, the answer, I can't be too definitive because I would have to be guessing where the patrols terminated and so forth. But the patrols frequently would begin, for instance, [19] in a place like Seldova because it was a harbor, but primarily the patrolling would be done in this area.

Q Now, you're pointing—

A I'm pointing to an area south of Kalgin Island, a line between Ninilchik and Chisik Island.

Q Now, was the reason that the patrols were somewhat emphasized in that area because that is where an active fishery was conducted?

A Yes.

Q What was that fishery?

A A salmon fishery, primarily red salmon.

Q At that time, also, you were familiar, as you have testified, with the definition of the Cook Inlet District as described in the regulations, is that correct?

A That's correct.

Q Do you remember what generally the points of land referred to in that description of the Cook Inlet District were?

MR. RASHKOW: I have to interrupt here to say the best evidence of that, of course, would be the regulations, I believe.

MR. CRANSTON: I'm just asking him if he knows at this time. If he doesn't, then I might have to refresh his memory [20] by reference to the regulations.

THE WITNESS: No.

BY MR. CRANSTON:

Q If I told you that the regulations defined that boundary as from Point Gore to Cape Douglas, would that refresh your memory?

A Well, under oath I would have to say no, I can't remember precisely that is the definition of the district. I don't question that may be true. Probably ten years ago I might have been able to say yes or no, but my answer is I don't remember really that was—you must remember one thing, during the time I was there the extent of my responsibility changed. They included, for instance, as part of my responsibility Resurrection Bay and so forth at some time during the time I was there.

Q I see. Okay. Assuming that was the definition of the Cook Inlet District, that is, a line from Point Gore through Barren Islands to Cape Douglas would you have considered it your responsibility to patrol that area as with respect to your enforcement duties?

A My responsibility. I can't answer yes or no on that because the extent of the patrol really had to do primarily with where there was fishing effort. If you meant did we see [21] whether there was fishing effort

there or not, then I would say yes. But we were familiar enough with the fishery and so forth to know that you wouldn't expect to find fisheries in certain areas and you would also expect to find it elsewhere. So we didn't just as a routine thing—for instance, I can't ever remember patrolling out to the Barren Islands on any occasion.

Q And would you say this is primarily because so far as you were aware there was no active fishery conducted on the Barren Islands?

A Yes.

Q Now, when you were patrolling, again, I'm talking about your enforcement duties, or maybe when I say "you," I refer to you and those under your supervision, generally what were you looking for?

A We were looking for such things as fishing during closed season. For instance, at times in Cook Inlet they might be only allowed to fish two days in a week. So if they were fishing on the days when the season was closed, and as you recall, under the White Act it was always closed on the weekends, we would be looking for anyone with fishing gear in the water during that period. This refers to salmon fishing.

Q All right. What other type of regulation did you [22] attempt to enforce or were you trying to ensure compliance with? For instance, were there drift net spacing regulations?

A Yes.

Q And did your patrols look for or seek to enforce compliance with those regulations?

A At times, yes.

Q And if a violation of the regulations were observed, what would be done?

A You would have to be more definitive because it depends on the regulations. For instance, if it were a spacing on the shoreline of set nets, it would be quite easy to go in and file a complaint and so on. If it were a violation of two vessels in the middle of the Inlet that were too close to each other, we would make some adjudication at the time as to whether or not they were

attempting to separate themselves or not. We are in an area where the currents are very strong and in spite of the regulations at times two boats together pulling on their nets as hard as they do could not help but violate the law in the sense that they would get too close together. So we would have to make some type of judgment. But if we felt at the time it was a deliberate violation we would attempt at least to do something about it, that is to say, cite the violater and so forth. [23] Q Now, in regard to this enforcement activity, in your attempts to ensure compliance with the White Act and its regulations in the Cook Inlet District did you concern yourselves at all with the distance a particular violation may have occurred from the shoreline, say, with respect to the spacing of drift nets?

A I'm sorry. I don't understand your question.

Q Well, suppose the violation of the drift net spacing regulations had occurred south of Kalgin Island and more than three miles from any point of land, would this make any difference to you, to your going in and attempting to enforce the regulation?

A No.

Q Had there been a violation of any of these regulaitons you would have enforced it within any point in the district as defined by the regulations?

A Yes.

* * * *

[29] Q During the time when you were in the Cook Inlet District were you aware or did you observe any activities by foreigners, by foreign fishing vessels in the area described as Cook Inlet as it appears on Deposition Exhibit 1?

A The only occurrence that I can call clearly to mind, and I can't be sure of the year, was two boats that were said to be Canadian boats were fishing somewhere in the area between Seldovia and Homer. They were apparently halibut fishing although I didn't see them put their gear in the water or anything. But they were somewhere in Kachemak Bay.

Q You can recall two Canadian halibut boats fishing in [30] the area, say, within a line—

A Between Homer and Seldovia.

Q All right. So that would be also within the line drawn from Anchor Point to Dangerous Cape, which are the headlands of Kachemak Bay?

A In that approximate area. And I want to qualify my statement by saying that these were pointed out to me by someone, I believe, Jim Branson, as Canadian boats. I didn't personally observe them except that I saw them and he pointed them out and said there's a couple of Canadian boats, or words to that effect.

Q Were you flying at that time?

A Flying in a Grumman Goose. We were on our way to Seldovia.

Q Could you point to Deposition Exhibit 1 and with reference to the word "Kachemak" try to indicate about where the boats were located?

A Approximately at the letter "C" in Kachemak.

Q All right. What, if anything, was done when you observed these boats?

A Nothing was done.

Q Was there a report made to anyone either by you or Mr. Branson?

[31] A I don't know. I'm not even sure it was Branson.

Q All right. Was that the end of the incident so far as you were involved—

A Yes.

Q —or concerned?

A (Affirmative nod.) As I recall it occurred prior to the time I was in charge of enforcement.

Q If it was not Jim Branson who was with you, could it have been anyone else?

A It could have been a variety of people. It could have been Holger Larsen. I haven't thought of these people in years. There was a very big, tall man. I can tell you if you run through the names, certainly.

* * * *

[34] Q All right. Well, that explains the absence of the reference in his report to me. Apart from that one incident then, are there any other incidents involving any type of foreign vessels in the Cook Inlet District as defined by the regulations of which you're aware or can tell me about?

A Not that I can recall.

Q Do you recall an incident other than the one you just told me about involving Jim Branson having observed a Canadian halibut boat in Cook Inlet and having referred the matter of [35] what to do about that boat to someone in Juneau, perhaps to Howard Baltzo?

A Again, as I recall, it was two boats; and, number two, we wouldn't have referred it to Howard Baltzo. We would have referred it to Swanson or Ralston.

Q I see. Do you know whether this incident of which you have told me about was referred to any of these people in Juneau?

A I have no knowledge.

Q Are you aware of any decision having been made by Howard Baltzo or through those under him, Mr. Swanson or Mr. Ralston, relative to procedures followed if foreign vessels, Canadian halibut vessels, or other foreign vessels should be observed in the Cook Inlet District?

A I'm not aware of any directions or information of that kind.

Q While you were in charge of the enforcement, then, you had no specific instruction from any of your superiors relative to any position you should take involving foreign vessels in Cook Inlet?

A That's correct. I got no instruction.

Q Did you generally have staff meetings where you would get together with your superiors or even with those working [36] under you and discuss problems which were of general concern to all of you, much as you would today going to a convention or something?

A We had regularly one annual meeting that occurred during the winter in Juneau which was the headquarters. And we had regular meetings with each

one concerned in the District prior to the annual fishery hearings which were held in all districts of Alaska every year, and sometimes more than one hearing was held in a district. For instance, some years we would have a hearing in Anchorage and then one in Seldovia to make it convenient for all fishermen and packers and so forth to attend and then there were also hearings held in Seattle. At those times those would be considered staff meetings which were briefings for the hearings.

Q At any of these meetings were there any matters involving the presence or activities of foreign fishing vessels in Cook Inlet brought up or discussed?

A Not that I recall.

MR. CRANSTON: I have no other questions. Thank you.

MR. RASHKOW: I'll go on with cross. Mr. Costello, this will be cross-examination.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[38] Q Were there any assumptions of what you would do if you detected a foreign vessel fishing more than three miles from shore in Cook Inlet?

[39] A To me it is a moot question. It was never posed.

Q What would you have done in enforcement if you had detected a foreign vessel fishing more than three miles from shore?

MR. CRANSTON: At this point I would lay an objection for the record that the fact upon which the question is based is not in evidence and also that it is opinion as to what he would have done. In the absence of any facts necessitating the action, it is irrelevant.

BY MR. RASHKOW:

Q Were you told to arrest any foreign vessel fishing in Cook Inlet more than three miles from shore?

A No.

Q There were no such instructions. What if they were violating the regulations?

A This is hypothetical, of course.

Q Right.

MR. CRANSTON: And, again, I would like to enter my same objection.

THE WITNESS: To the best of my knowledge, and in response to your hypothetical question, I think we would have treated them like we did any other vessel. If they were in violation, we would have arrested them.

* * * *

[47] FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q You testified on cross-examination in response to a question that were you ever told to arrest foreign vessels in Cook Inlet, and you said you were not told to arrest foreign vessels in Cook Inlet. My question is were you ever told by anybody not to arrest foreign vessels in Cook Inlet?

A Neither.

* * * *

[3] Thereupon,

ALBERT M. DAY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please.

A Albert M. Day.

Q And what is your address?

A 1810 Pine Street, Camp Hill, Pennsylvania.

Q And what is your age?

A I am 74.

Q What is your present occupation?

A Oh, I am presently retired and serving as a consultant to various agencies, State and Government, on conservation matters.

Q Have you ever had an occupation or employment with the United States Government?

A All my life, practically.

Q And could you tell me what those occupations have been?

A I started back in 1919 while I was still in college [4] at the University of Wyoming as a field assistant for the old, former Biological Survey of the Department of Agriculture, and through continuous employment and various promotions, I came into Washington from Wyoming in 1930 and I was with the Biological Survey until it was abolished in 1940. At that time the Department of Commerce, Bureau of Fisheries was combined with the Biological Survey and it became the United States Fish and Wild Life Service in Interior. I was Assistant Director in the Biological Survey at that time and became Assistant Director of the Fish and Wild Life Service in 1942. I held that position as Assistant Director until Dr. I. N. Gabrielson. who was the Director, retired and I became Director of the Fish and Wild Life Service which, as I stated, was a combination of the Biological Survey, the wild life side, and the Bureau of Fisheries, or the fisheries side. So, we had a combined operation covering all fish and wild life at the Federal level. I served as Director of the Agency until approximately June 30, 1953, at which time we had a change in Administration in Government and I was reduced in grade to an Assistant Director. I served in that capacity until I retired in June of 1955.

Q All right, now, with respect to your training for your occupations with the Fish and Wild Life Service, what [5] particular training had you had?

A I was a graduate in zoology from the University of Wyoming, largely fisheries and wild life, and served in various capacities throughout this entire period. As time went on I was the first Director of the Pittman-Robertson Program which was a highly successful program of distributing arms and ammunition tax to the states for wild life restoration. Then, I helped argue through Congress and set up the parallel program, the Dingle-Johnson, as it is known, which is Federal aid to the fisheries for the various states, including Alaska and all the territories. So, my experience and training has been exceedingly broad in both fields.

Q Now, you stated you were Director of the United States Fish and Wild Life Service from 1945 through 1953?

A 1946 through 1953. I was Assistant Director four years previous to that, which also brought me into contact with the administration of the fisheries.

Q Now, could you describe a little bit the responsibilities you had in that office, what responsibilities you had?

A The responsibilities were very broad. We enforced [6] laws under a treaty with Canada which date back to 1918 dealing with migratory birds. We enforced the laws dealing with the Alaska fur seal under a treaty with Russia and Canada, dating back to, oh, somewhere around the 1920's. Then, we negotiated and created treaties on fisheries with Canada in connection with the halibut fishery, the sockeyesalmon fishery in British Columbia, the North Pacific Fisheries Commission Treaty, and the Great Lakes Fishery Treaty. Those are the principal treaties with Canada and with other nations dealing with the handling of the fisheries of interest to these various countries, both on the Pacific and Atlantic.

Q And with respect to Alaska, did you have any responsibilities under Federal law there?

A Yes, I had very heavy responsibilities.

Q Could you describe what your responsibilities were particularly with respect to fishing in Alaska?

A Under the Alaska fishing laws and regulations for the protection of the commercial fisheries of Alaska—I am quoting from a 1953 issue—"The regulations for the protection of the commercial fisheries of Alaska shall be subject to such change or revision by the Secretary of Interior as may appear advisable from time to time. There is hereby delegated to the Director of the Fish and Wild Life Service authority to [7] shorten, lengthen or reopen for limited periods any closed fishing period and to impose further restrictions on the means, methods and areas of fishing," and so on. So, there was delegated to the Director, to me, the Secretary's authority for the administration of the Alaska fisheries.

Q All right, did the Secretary then leave most of the management of these fisheries in your hands while you were Director?

A Yes. I obtained copies of some of these regulations from the Interior Library yesterday which include. I also have an illustration of the methods used under this delegation of authority for management of the fisheries in the field. I find in the 1946 regulations which was the first year that I became Director, although, as I stated, I had been Assistant Director for four years previous to that time, a series of changes which I signed, one dealing with the Bering River and Icy Bay area fisheries; another, Kodiak fisheries; another, Southeastern Alaska fisheries; Bristol Bay, Kodiak extension of the zone in Alaska Peninsula and a whole series of seventeen changes dealing with various fishing areas in Alaska, and also an announcement of hearings. So, the regulations, and the old files are ample proof of the responsibility of the Director of the Fish and Wild Life Service to manage the fisheries under the delegation of [8] authority from the Secretary of the Interior.

Q All right, now, with respect to the particular laws and regulations governing the fishing activities in Alaska, did you have any responsibility for the enforcement of those laws?

A Yes, we had complete authority in Alaska at that time. It was a territory and under the Alaska fishing

regulations, the Director of the Fish and Wild Life Service and his staff had complete authority for the enforcement of laws of Alaska dealing with fisheries and wild life.

Q And you have stated that you were the individual to whom the Secretary of Commerce delegated—

A Interior.

Q Secretary of Interior delegated his responsibility in this area?

A Yes.

Q Now, are you familiar with the laws and regulations promulgated under the White Act and with the White Act, itself?

A At that time I was very familiar. It has been almost twenty years, so I am not familiar now with things that have happened since that time, but at that time I was very familiar, yes.

Q With the Act and the regulations?

[9] A That is right.

Q Are you familiar or were you at the time you were Director familiar with the boundaries of the various districts which the regulations defined under the White Act with respect to fishing in Alaska?

A Yes. In these areas of which there were at that time thirteen specific areas specified by law defining the boundaries of these thirteen areas, which covers everything from the Kotzebue, Yukon, Kuskokwim area in the Bering Sea, down around the entire Aleutian Chain of islands and clear on down along the Coast to the Border of Canada, divided and named, and these districts were established in the original instance under the old White Act which is listed in the regulations as originally passed on June 6th, 1924, but as amended on June 18, 1926. So, these districts have been established under the authority of the Fishery Law and have been practically unchanged since 1924.

MR. CRANSTON: All right. I would like to have marked as Deposition Exhibit 1, U.S. Coast and Geodetic Survey Chart 8502, 16th edition, dated July 4, 1970, corrected through notice to Mariners 27/70.

(Chart marked Defendant's Deposition Exhibit No. 1 for identification.)

[10] BY MR. CRANSTON:

Q All right, Mr. Day, I am going to hand you what has been marked as Exhibit 1 to this deposition and ask you if the portion of this chart depicted as Cook Inlet was included within the area over which you had responsibility as Director of the Fish and Wild Life Service?

A The answer is yes.

Q Now, again, with reference to Exhibit 1, can you locate the areas defined by the regulations as the Cook Inlet District?

A The regulations define Cook Inlet as follows: "Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters and all adjoining waters north of Cape Douglas and west of Pt. Gore. The Barren Islands are included within this area."

Q All right, could you indicate by drawing a line on Exhibit 1 where the boundary of the Cook Inlet districts would be as you interpreted the regulations?

A Do we have a colored pencil?

Q Yes. Here, I am going to hand you a red pencil.

A I am marking this—

MR. CHARNEY: I object to the question but I will allow him to continue.

[11] MR. CRANSTON: You may continue.

THE WITNESS: I am marking this map from Cape Douglas, as defined by the regulation, eastward around Barren Islands and northeastward to Pt. Gore. There is Pt. Gore.

MR. CRANSTON: All right, the record will show that the witness drew a red line on Deposition Exhibit 1 circling Cape Douglas and also circling Pt. Gore and drawing a line between those two circles.

THE WITNESS: South of the Barren Islands.

BY MR. CRANSTON:

Q Over what portion of the water area north of that line did you consider you had authority to exercise jurisdiction of the Fish and Wild Life Service?

A All of it.

Q And in your administration of the Fish and Wild Life Service, did you exercise jurisdiction over that area?

A We did.

Q And upon what did you base your decision to exercise jurisdiction over that area?

A The law.

Q And specifically what was the law you relied on?

A The general provisions of the basic law of 1926 which, under Section 102.1, states that, "Each regulation [12] herein contained is of general application within the particular area to which it applies and no exclusive or several right to a fishery is granted therein," and the law in this instance on Cook Inlet applies to the area as defined in paragraph 109.1, which states that, "The area includes all waters, tributaries, and all adjoining waters north of Cape Douglas and west of Pt. Gore including the Barren Islands."

Q Did the Secretary of Interior ever question, while you were Director, your administration of the fish and game laws as you applied them in Cook Inlet?

A Not to my recollection. I assume that questions were raised on all of Alaska from time to time, but nothing—

Q Did you ever receive instructions to vary your practice from the Secretary of Interior?

A Oh, possibly. The Secretary was the final authority and I had frequent conferences with him and I presume over the years that suggestions were made by the Secretary that we should do this definitely or that definitely. That would be normal procedure of any good administrative outfit.

Q But specifically, with respect to the area over which you exercised jurisdiction in Cook Inlet, did you receive instructions—

A No, not to my recollection.

[13] Q Are you familiar with the concept of the three-mile limit?

A Yes.

Q And with respect to the administration of the fish and game regulations in Cook Inlet, where did you apply the three-mile limit?

A We applied the three-mile limit three miles south of the border—which I have drawn.

Q That is, you applied the three miles from the red line that you have drawn on the map?

A Yes, seaward.

Q While you were Director of Fish and Wild Life Service, were you aware of any foreign fishing activities in Cook Inlet?

A Not to the best of my recollecton.

Q Was there any policy promulgated by you or of which you are aware with respect to foreign fishing activities in Cook Inlet?

A No. Since coming down to Washington and going over some of the material, I find an instance in some of the correspondence of Canadian boats coming in and fishing for halibut, as I recall the correspondence. I don't remember the incident. I am sure if it had been of any great moment, I would have remembered it.

[14] Q Do you recall any decision which you made at that time as Director with regard to the permissability of Canadian halibut fishing in Cook Inlet?

A Well, I didn't recall it until I arrived here yesterday, and I was shown a memorandum which I signed on April 28, 1953, quoting a portion of an opinion from the Chief Counsel of the Fish and Wild Life Service at that time, Don Chaney, in which he touches on foreign fisheries in Cook Inlet area and says that the situation is somewhat cloudy. Cook Inlet has never been claimed as an historical bay, yet he refers to territorial waters, and we have been considering the territorial waters as I have outlined on this map. So, this opinion in re-reading it here after almost twenty years is not clear to me exactly what was meant at that time.

MR. CRANSTON: Mr. Charney, is this your copy? I would like to have this marked as an exhibit. Would you mark these two pages, one a memorandum dated May 8, 1953, from Dan Ralston to Enforcement Agent Larsen

and Enforcement Agent Robards; and memorandum dated April 28th, 1953, from Albert M. Day to the Regional Director of Juneau. Mark those as Deposition Exhibit 2.

(Documents marked Defendant's Deposition Exhibit No. 2 for identification.)

[15] BY MR. CRANSTON:

Q Referring to the quote from the Chaney opinion in your memorandum of April 28th, 1953, there is a reference that it would be "unwise to take any action against foreign vessels fishing beyond the territorial waters of Alaska, that is three miles." Now, with respect to Cook Inlet and the three miles referred to in that letter, and again with reference to Deposition Exhibit 1, where would you determine the point with respect to Cook Inlet where it would be "unwise to take action against foreign vessels"?

MR. CHARNEY: I object to this question. I think the document stands for itself. The witness states that he does not recall this document. I think it would be irrelevant and improper for him to give an opinion now. He has left the service. He doesn't recall what he meant when he wrote that memo.

BY MR. CRANSTON:

Q Do you recall, Mr. Day, how you interpreted this memorandum with respect to the three-mile limit in Cook Inlet as to your attitude towards foreign fishing?

A No, I don't recall this memorandum. It was a complete surprise to me. I don't understand exactly what it means. So, I would have to agree, I think, with Mr. Charney. [16] I am not really competent at this time, twenty years later, to give an intelligent comment on what Chaney did mean.

Q All right. But as to your interpretation of the regulations and the three-mile limit with respect to Cook Inlet, you have testified that you would have measured

the three-mile limit and you did during your administration from the red line drawn on this map?

A That is correct, to the best of my recollection.

Q Now, with respect to foreign fishing activities in Cook Inlet, while you were Director, would it have been your policy to permit foreign vessels to fish within the red line drawn on that deposition Exhibit 1?

A No, it would not.

MR. CHARNEY: Objection. What his policy would be is irrelevant to this case but rather what was done.

BY MR. CRANSTON:

Q Did you permit foreign fishing vessels to fish within three miles?

A Not to my knowledge. As I said, now I understand there was some. I don't recall it. So, if there were halibut vessels in there, certainly some—not me, personally—but some of our staff must have known that they were there. In fact, I think the depositions will show that they contacted [17] some of the Canadians, perhaps. I don't know the details on it.

Q Was there any difference during your time as Director of Fish and Wild Life Service as to policies with respect to Canadian fishing vessels and fishing vessels of other nations?

A I don't know that one could call it a policy. But as a matter of fact, and as I stated earlier, we had a great many fishery treaties and wild life treaties and contacts with the Canadians and we worked quite closely with them on all of these fish and wild life matters that were of interest to both countries. I presume that if this had come to my attention, and I don't recall that it did, my first reaction would have been to contact our State Department representative, who worked with the Canadians, as well as other countries, to call it to the attention of the Canadians to see if it could not be disposed of without any difficulty. I rather guess that is what happened.

Q I see.

A I have no recollection of it personally.

Q It would have been your conclusion, then, that because of your close contact with the Canadians, that they should be permitted insofar as possible—

MR. CHARNEY: Objection. That is a leading question.

BY MR. CRANSTON:

[18] Q Would you have taken the same attitude with respect to Japanese or Russians had they appeared in Cook Inlet?

A Probably not. We didn't have the close working relationships on international basis with them.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. CHARNEY:

* * * *

[19] Q If one of your enforcement agents testified as to the jurisdictional limits that they used in Cook Inlet, would you dispute that?

[20] A I might. I don't know what it would be. I notice in this memorandum that we have under discussion—may I have that again, please, this one—that my memo of April 28th was sent to the Regional Director, and that Dan Ralston, who was in charge of enforcement, sent out his memorandum and specified the manner to be followed. He said, "As the Director points out, this is a legal question and the Chief Counsel's opinion which the Director quotes will be the policy which we will follow. I am not in complete agreement with the Counsel regarding Cook Inlet, as it is my opinion that this Inlet is and has been historically claimed as Territorial waters." So, there were differences of opinion at times, but under this regulation under which we operated, I could see no reason now and I am sure at that time why we should not have enforced our laws within the limits set by the regulations.

Q Now, aside from your interpretation of the law and the regulations as you have done here, were you given any other directives by the Secretary or by the State Department that you recall telling you the jurisdiction you were to exercise in Cook Inlet?

A No.

Q Do you recall raising the question of the jurisdiction in Cook Inlet with the Secretary of the Interior?

[21] A No.

Q Do you recall discussing that question with the Secretary of Interior?

A No. For clarification, let me state this: That from the standpoint of fisheries in Alaska, Cook Inlet was of much lower priority of importance than several of the other areas and our attention was given in large part to the very important sockeye runs in Bristol Bay and the red salmon runs in Southeastern Alaska and the Juneau area. Many areas are much more important from the fishery standpoint than Cook Inlet. Cook Inlet was something that we just didn't pay as much attention to because it was of less importance to the industry.

Q You applied the three-mile limit south of this line you have drawn on Deposition Exhibit 1. What do you mean by "you applied"? Did you do anything with respect to it or are you just speaking in theory?

A No. The enforcement officers, I am sure, were instructed to consider the area within the three-mile limits as territorial waters and to enforce the regulations at that point.

Q Do you recall any such order?

A No.

Q Do you recall any incident of enforcement of the laws [22] three miles seaward of that line?

A Not offhand, no.

Q Do you recall any action by the United States, by you in your enforcement, in your position, that was based on jurisdiction extending three miles seaward from the line you described on Deposition Exhibit 1?

A Yes.

Q What do you recall?

A In reading from the regulations the definition of the Alaska Peninsula area, "The Alaska Peninsula area is hereby defined to include all territorial, coastal and tributary waters of the Alaska Peninsula from a point on the Coast, three statute miles south of Ketchikan Sea Cove on the Bering Seashore, extending southwestward—

Q No, what I am asking you is whether any actions—I don't mean about the written regulations—I mean enforcement actions, actions in the field or otherwise.

A I have no recollections of the detail on that.

Q Well, you have no recollection of an incident, either, do you?

A No.

Q Do you have a recollection of any convictions obtained while you were in your position from 1942 to 1955 of [23] American fishing in violation of the regulations more than three miles measured from the shore inside Cook Inlet?

A I have no details in my recollection on this matter, and I have no records. So, I wouldn't be able to corroborate one way or the other.

Q At the time this memorandum was written, the April 28th one, were you the Director of the Fish and Wild Life Service?

A Yes. I signed it here.

Q Do you know who Agent Larsen was, FWS, Anchorage?

A Yes. Holger Larsen was the enforcement agent at Anchorage for both fisheries and wild life.

Q Was he the man that was in charge of enforcement in the Cook Inlet District that you have spoken of?

A In that district?

Q Yes.

A Yes, I am sure of that. Dan Ralston who wrote this memorandum was in charge of enforcement for all of Alaska. Holger Larsen was the agent at Anchorage.

Q Do you recall ever rescinding this memorandum?

A No. I left as Director shortly thereafter so I couldn't testify as to what happened since that time?

* * * *

[25] Q If Howard Baltzo testified that he was Assistant to the Regional Director and he was over Dan Ralston in 1952 and 1953, do you have a firm recollection to disagree with that?

A I would doubt it.

Q You doubt what?

A That he had authority over Ralston, that his authority as an Assistant Regional Director extended to supervision of Ralston doing enforcement. I don't recall the details of the regional setup but it would not be my recollection that Baltzo was ever administratively responsible to [26] any great degree at least for the actions of the enforcement group. I may be wrong but I don't think so.

Q Aside from Alaska, what other responsibilities did you have?

A Well, we had responsibility of the entire United States in working with states and state fishing and game departments. We had authority in Hawaii to run a Pacific Oceanic Fisheries Research Project. And we had responsibility in Hawaii, elsewhere in Hawaii, on wild life matters and we had responsibility in Puerto Rico in certain areas. We had treaties, interstate treaties, completely surrounding the Border of the United States on fishery matters. There was the Atlantic Fishery Compact, the Gulf Fishery Compact, the West Coast Fisheries. We have international relations with Costa Rico and Mexico and some other Central American countries on tuna. We have the regulations which I mentioned with Canada. In the United States we had, as I recall, about 4500 employees responsible for research, including wild life research. Wild life research stations. There were more than a hundred fish hatcheries that produce game fish distributed in cooperation with the various states; responsibility for protection of migratory birds. We had authority for a predator control program * * * [27] dates back to 1915 when the wolves and coyotes and mountain lions were troublesome on the growing livestock industry in the West; and rodent control—prairie

dog and ground squirrel and rat control; and we have research stations in Denver on wild life matters, and another one out here at Patuxtent, Maryland, that is now working largely on pesticides and restrictions of that kind. We have had projects dealing with control of blackbirds in the rice fields of the lower Mississippi and almost anything that you could name in Federal responsibility for fish and wild life resources came under the Directorship of the Fish and Wild Life Service at that time. Since I left the Government, the two bureaus that had been wed for some ten or fifteen years, were divorced again and the Bureaus of Commercial Fisheries and Bureau [of] Sport Fisheries and Wild Life were established. This has more recently been changed by commercial fisheries going over to one of these new agencies.

Q I notice that you went from Director to Assistant Director in 1953?

A We experienced a change of administration when General Eisenhower and the present President of the United States came in at the top of the Government. After a long [28] period of political draught, quite a few changes were made in top command. The Secretary of the Interior was a former Chevrolet car dealer in Oregon and stated that he wanted his own men around him, which has become rather commonplace since. So, for the first time in many, many years the agency was converted from a scientific agency—all the previous Directors had come up through the ranks—to one that was quite political. He brought in a new Director. His name was John Farley from California. He became Director of the Fish and Wild Life Service. But, having had service since 1919 and being a veteran of World War I, I happened to have considerable employment rights and refused to politically step out and forget about the whole thing, so I was reduced in grade to an Assistant to the Director and remained still with the Government for a period of time until I became located outside. I then went with the Artic Institute of North America where I spent a couple of years. Following that, I became Director of the Fisheries in the State of Oregon for four years. Following that, I became Director of Fisheries in the State of Pennsylvania for another four years, and since retiring from there, I have been working with a half dozen bureaus as a staff consultant; Bureau of Land Management, National Park Service, the Sport Fisheries and Wild Life and Public [29] Land Law Review Commission, and so I have been keeping considerably busy since that period. But that was the reason for my reduction in grade from Director to Assistant Director.

MR. CHARNEY: I have no further questions. I would like to state for the record for Mr. Cranston's information that Deposition Exhibit 2 was located in the open files of the National Fisheries Service in Juneau, Alaska, and have been made available to the—well, I guess I am not testifying, I am informing you and I want to see if you approve. The words "confidential" have only been recently struck out, although I don't think they were under any restrictions, or they weren't. Alaska had access. We took the precaution of getting authority to strike out the words "confidential" to make sure I wasn't violating any national security problems. I don't see any national security implications but, like I say, this document has been changed in that way.

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FURTHER EXAMINATION
BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q You don't intend to imply, do you, that Cook Inlet did not have valuable fisheries by your testimony?

[30] A No. I don't want to leave that impression that they do not have valuable fisheries but there are other areas that are more valuable. Cook Inlet is not the top fishery district in the State of Alaska.

Q All right, now, you testified relative to rather extensive responsibilities of your office while you were Director outlining at length what your responsibilities

were. Notwithstanding those responsibilities, did you regularly visit Alaska?

A Yes. At the time I became Director, the Secretary of the Interior had to sign all of these documents of changes and regulations. I asked him to make this delegation of authority which I read to you before. He delegated it to the Director of the Fish and Wild Life Service with other delegations subject to his approval. Alaska was a very, very, valuable fishery. At that time it was a hundred million dollars a year. A million or two dollars could be made or lost with one or two days difference in the fishing season when there is a valuable sockeye salmon or red salmon run, particularly in the Bristol Bay area. So, the responsibility for this fishery was such that during seven summers when I was Director I virtually gave up responsibilities in these numerous other areas and concentrated on Alaska, on the [31] Alaskan fishery matters, to be there on hand to sign these regulations on the spot because of the urgency oftentimes of the importance of the fishery and the management of the fishery. So, I spent practically—well, most of every summer for seven years, from 1946 through 1952 in Alaska concentrating—first priority was on fisheries, although because of our responsibility on fish and wild life with the Regional Director, Clarence Rhode, and the technicians and so on, I covered all of Alaska. Nunivak and the Pribilofs and the whole thing. But fisheries were the prime concern at that time and for that reason I spent almost every summer in Alaska. I mean, almost all of every summer in Alaska.

• • • •

[2] DONALD W. ERICKSON,

called as a witness by and on behalf of the defendants, having been first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Donald W. Erickson.
Q What is your residence?
A Route 7, Box 589, Olympia, Washington 98506.
Q What is your age?
A 61.
Q What is your present occupation?
A I am a contract officer, for the State of Washington, Department of Fisheries.
Q Have you ever had any former occupations with the United States Government?
A Yes.
Q Have you had any occupations, in United States Government service, involving Alaska?
[3] A Yes.
Q Did any of these occupations concern themselves with the Cook Inlet area of Alaska?
A Yes.
Q When did you first work in the Cook Inlet area?
A In the summer of 1941.
Q In that period, then, what years did you work in Cook Inlet?
A To the best of my memory, 1941 and 1942.
Q What were your responsibilities?
A I was a temporary employee, at that time, assisting Captain Roy L. Cole, the Master of the Teal, who was also the agent in charge of the Cook Inlet district, for the Fish & Wildlife Service.
Q What, specifically, was your title, if you had one?
A I believe the title used, for the temporary, at that time, was stream guards.
Q During that period of time, what was the nature of the commercial fishery being conducted on Cook Inlet, what type of commercial fishery was it?
A Oh, it was essentially a salmon fishery.

Q Could you then subclassify that into the type of fishery?

A Well, of course, that is by types of gear. I have, here, my copy of the regulations from 1957 and they are essentially the same, from year to year.

[4] MR. BRADLEY: I would object to his reading; that is the best evidence.

BY MR. CRANSTON:

Q Do you have any recollection as to what type of gear they used, in 1940, when you were there?

A You mean in the salmon fishery?

Q Yes?

A Well, they were salmon traps, beach seines, drift gill nets and set gill nets, frequently called set nets and stake nets, which is just another name for the same kind of gear.

Q Do you recall, generally, the area of the drift gill net fishery, in the 1940's, in Cook Inlet?

A Largely, it was confined to an area—most of it actually north of Kalgin Island, but some of it south of the island, down about as far as Seldovia.

MR. CRANSTON: I would like to have marked as Defendant's Deposition Exhibit 1, U.S. Coast and Geodetic Chart No. 8502, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document, chart, marked as Defendant's Exhibit 1, for identification.)

Q Mr. Erickson, I will show you what has been marked as Defendant's Exhibit 1, for this deposition, and ask you [5] if included within the area depicted as Cook Inlet is the area where you served, in the 1940's?

A Yes, sir.

Q If you can remember—and if you cannot, just say so—but if you can state the limits of the gill net fishery, in the 40's, I would ask you to outline it on this exhibit, with a red marking pen; I mean enclose it with a red circle, if you can?

A Basically, I don't believe that the thing went south of Anchor Point. You are talking about the drift gill net fishing, now.

Q Right.

A How far up it went, I don't remember; I seem to remember some fishing, around the Forelands.

BY MR. BRADLEY:

Q Could you draw it, on the chart?

A To the best of my memory, there was some of it up here.

Q Where is that?

A South and west of Fire Island. But essentially, it was in here. There was some drifting done, in Trading Bay, by the natives, who had a whole series of set nets, along here, and there was some drifting done, in here, too. For practical purposes, let's put it across there (drawing line).

BY MR. CRANSTON:

[6] Q You have drawn a line, from Anchor Point to a point almost directly across from Cook Inlet, on the western shore, and that line you indicate was the southern boundary of the drift gill net fishery?

A Well, as I remember, where they drift; it is not a matter of legality but it is a matter of water. It is possible that we had that thing closed off, too, at some later time. One of the big problems we were faced with was too much gear. Of course one means of taking care of that is to restrict the area, in which they can fish.

Q To the best of your recollection, then, the area where the gear was present was north of that red line which you have drawn?

A That's right; and south of the line, from West Foreland to East Foreland. But as I say, there may have been some drift netting, above there, and in fact I am sure there was.

Q Did the drift gill net fishery concern itself with any particular locality, within that red area, within

those two lines that you have drawn, or was it scattered throughout that area?

A It was scattered—just wherever they thought they could catch fish.

Q But then, just so we are clear, you are saying that [7] all of the water area enclosed within those lines would comprise a drift gill net fishery, at some time or another, is that right?

A Oh, yes. There is a drift gill net fishery there; let's put it that way.

Q And I am talking about the 1940's?

A Yes.

Q What governed the areas that you would patrol, with Captain Cole, in other words, where would you patrol with him?

A All of the way up and down the inlet.

Q What was the purpose of these patrols?

A To see that the law was enforced.

Q Against whom?

A Any fisherman that's out there.

Q Did your patrol, in the 40's, concern itself with any distance from the shoreline?

A Not particularly. You went where the gear was or where you thought the gear would be.

Q Was there any halibut fishery conducted in Cook Inlet, in the 40's?

A To the best of my knowledge, no, except an occasional halibut was taken, incidentally; and I believe that the halibut regulations permitted what they called incidental catches.

[8] Q Did you ever observe any Canadian vessels, fishing for halibut, in Cook Inlet, when you were there?

A No, sir.

Q What year was it that you said you terminated your activities, in Cook Inlet, in the 40's?

A Oh, I think it was 1942; you see, it is a seasonal thing. When the season was done, at that time, the patrol boat went south and wintered, in Seattle.

Q Did you have any responsibilities, in Cook Inlet, subsequent to 1942?

A Not specifically, until I was transferred to the Washington office, in 1948.

Q By Washington, you refer to the District of Columbia?

A Yes; Washington, D.C.

Q What was your position, then?

A I was—I guess you could call it—Section Chief, in charge of the commercial fisheries. The branch of Alaska Fisheries was divided into two parts, the commercial fisheries and the Pribiloff Island operations. I was in charge, at the staff level, of the commercial fisheries end of it.

Q Did this responsibility include the Cook Inlet area?

A It included all of Alaska, as far as the commercial fisheries was concerned.

Q Generally, what were the functions of your particular job?

[9] A How brief do you want this?

Q Oh, brief enough so that we can get an idea of what you were doing and of what your responsibilities were, for Alaska?

A Essentially, the regulations governing the fisheries of Alaska were amended, annually, on the basis of hearings that were held in certain of the districts, in Alaska, essentially in Juneau, and in Ketchikan, on occasion, and in Anchorage. But the main hearing was held in Seattle, at which time the recommendations of the various agents —each for his district—and the Service, generally, were presented to the canned salmon industry and the fishing public, at public hearings, setting forth what the proposed regulations for the following year would be and the accepting of briefs, from any and all, followed by the acceptance of written briefs, in Washington, D.C., until a deadline, sometime around the first of the ensuing year, the one for which the regulations were to be adopted, so that there was some cutoff point, after which we could draft the regulations and get them published, in the Federal register, and get a regulatory announcement booklet printed, at the Government Printing Office, and distributed to the public.

My duties were to go to Alaska and see how the [10] regulations which we had adopted were working out, whether they accomplished the purpose, for which they were designed, that is, whenever it was possible to get up there, to do this. Somebody had to run the store, in Washington, too, of course; so we divided the duty up. But I attempted to get up there, each year, to see how the regulations were doing and to assist and give advice, and attend the Seattle hearings; and then to review the briefs that were submitted to the Washington office, and then to sit down and translate all of that into a set of regulations, after a consultation with superiors, principally the Assistant Director, in charge of Fisheries, and the Director of the Fish & Wildlife Service, who had the final responsibility, for promulgation of the regulations, as such.

Q Who was the Director, during your tenure?

A There were a number of directors. It is a little difficult to remember them all.

Q Was Albert Day the first Director?

MR. BRADLEY: Objected to as a leading question.

A Do you mean during the time, now, that I worked for them?

Q Yes?

A At the time I went to work, for them, I believe the [11] Director was Dr. Ira Gabrielson. There was another director, and whether he came before or after, I don't know, but then there was Albert Day, who was the Director for a number of years.

Q What was the year you said you terminated this position, in Washington?

A October, 1960. They made a State of Alaska, and of course the control of the fisheries of Alaska went to the new state. I stayed on, to button things up, and to generally help with turning all of our records and our fleet of planes, boats and ships and everything else over to the new state. So I was on, until October of 1960.

Q Did you participate, at all, in the formulation of state regulations, concerning commercial fisheries?

A No.

Q When you were in the Washington D.C. office, did you formulate or was there formulated any policy, concerning foreign fishing activities in Cook Inlet?

A Well, there was really basically no policy to formulate. It was against the law, for an alien to fish in the waters of Alaska.

MR. BRADLEY: I object to the answer as being a legal conclusion.

BY MR. CRANSTON:

Q Putting that, then, in respect to Cook Inlet, was there [12] a policy on this subject?

A Written into the law is a prohibition against aliens fishing, in the waters of Alaska.

Q Was it the policy, while you were in the Washington office, then, to consider Cook Inlet as being those waters?

A Yes.

Q When you refer to Cook Inlet, what area do you have in mind?

A Are you going to refer to this book?

Q If you need it, to refresh your memory. But can you refer to the chart and indicate what you refer to as Cook Inlet?

A Cook Inlet is described in the regulations.

MR. BRADLEY: He is asking you to testify from memory, not from what the regulations—

MR. CRANSTON: Wait! If you have an objection?

MR. BRADLEY: I object.

BY MR. CRANSTON:

Q Would you continue, then; by whatever means you have, to refresh your memory, what you referred to, when you speak of Cook Inlet; that is, if you have to refer to the regulations, to refresh your memory?

A Well, yes, although—

Q In other words, do you have any landmarks to which you refer, when you talk about the Cook Inlet area?

[13] A Yes.
Q To what?
A Cape Douglas and Point Gore.
Q When you referred to Cook Inlet, in your statement regarding the alien fishing, what areas of Cook Inlet did you refer to?
A Well, the whole thing. The description of it is Cape Douglas to Point Gore, including the Barren Islands. We prepared charts, showing those designations.

* * * *

[3] JOHN T. GHARRETT,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A John T. Gharrett.
Q And what is your address presently?
A 6171 Leesburg Pike, Falls Church, Virginia, Apartment 530.
Q And what is your business address?
A National Marine Fisheries Service, Washington, D. C.
Q And what is your age?
A I was born in 1909.
Q I guess we can figure it out from there. What is your present occupation?
A I am staff assistant to the Director of the National Marine Fisheries Service.
Q How long have you had that position?
A Two years.
Q Have you ever had a position with the United States [4] Fish and Wild Life Service or any of its predecessor or successor agencies in Alaska?

A Yes.
Q What was that position?
A Two positions. The first one I started out as assistant regional director for coordination and subsequent to that I was regional director of the Alaska region, both the old Bureau and the Commission of Fisheries.
Q State the years that you held each of those positions?
A Roughly about 1956 to 1960.
Q Do you know when you changed from assistant director to director?
A No, I do not. It was about '58, plus or minus a year.
Q Prior to the time you were assistant regional director in Alaska, what job did you have?
A I was the research coordinator for the Pacific Marine Fisheries Commission.
Q And where was that located?
A Headquarters were in Portland, Oregon.
Q Is that where you worked?
A Well, the three states. The Pacific Marine Fisheries Commission was composed of three states; Oregon, Washington and [5] California. My headquarters were in Portland but I worked in the three states.
Q When you were assistant regional director and director in Alaska, where was your base?
A Juneau, Alaska.
Q Did you ever during the time you were in Alaska participate in any Conference with the Canadian Government involving salmon fisheries?
A Yes.
Q Do you recall what year that was?
A Not precisely.
Q Could it have been 1957?
A Yes.
Q Do you know where the Conference was held?
A My recollection is that it was in Seattle.
Q What was the purpose of the Conference, if you can recall?
A The purpose of the Conference was to discuss with the Canadians the possibilities and ways and means of

limiting the expansion of salmon net fisheries in the offshore waters.

Q Did the United States prepare any maps or charts at this Conference or after the Conference?

A Both.

[6] MR. CRANSTON: I would like this Chart 8502 with the following notation in the lower left hand corner, 44-8/4, 9/27; 45-1/9, 7/28; 47-6/30; 9/29 49-6/20; 50-9/4, marked as Defendant's Exhibit 1 for identification.

(The Chart was marked Defendant's Exhibit 1 for identification and is attached to the court copy of the deposition.)

BY MR. CRANSTON:

Q Mr. Gharrett, I am going to hand you what has been marked for identification as Defendant's Exhibit 1, which as you see, is a chart with a line drawn on it and ask you if you recognize this?

A I recognize part of it. This part—

Q You are pointing to—

A —off Copper River. I recognize this area.

MR. BRADLEY: From—

THE WITNESS: From when it was constructed.

MR. BRADLEY: It won't be on the record what you are pointing to. Describe it.

THE WITNESS: Oh, I am pointing to the drawing of the line, dotted line and solid line in different locations of the mouth of the Copper River. I recognize that part. That stays in my mind. The rest probably within reason is what we drew.

BY MR. CRANSTON:

[7] Q By "what we drew," what did you draw. For what purpose did you draw this line?

A This line was drawn as a proposed line beyond which we again proposed to limit the development of the salmon net fisheries by fishermen of the United States.

Q What was your role in the preparation of that line?

A My role was to decide where the line goes.

Q Did you have assistance from anyone?

A Mr. Clay Scutter.

Q Has the line since been given any kind of name?

A Oh, I don't know since. At the time we drew it, rather than to say "a line beyond which we proposed," et cetera, et cetera, we called it the Gharrett-Scutter line for short.

Q In your preparation of the line what criteria did you use for placing the line on the chart?

A We used two basic criteria: 1) we wanted to encompass within the line existing salmon net fisheries along the Coast of Alaska, and 2) we wanted in some areas to allow for a modest, perhaps, expansion of existing fisheries, salmon net fisheries.

Q Are you aware of any other line in addition to the line which you drew as having been drawn and presented to the Canadians?

[8] A Yes. At the meeting which we formerly referred to, to show the thinking of what was being discussed, the Canadian delegates drew a line along Vancouver Island and, I believe, Queen Charlotte Islands on a very small scale map to indicate the thinking, and we at that time as American representatives drew a similar line. I believe it was from Dixon Entrance to Icy Straits.

Q Would there have been any line in addition to the lone [*sic*] on Exhibit 1 drawn from Cape St. Elias to Shumagin Islands of which you are aware?

A Your question is not clear.

Q I am trying to determine whether on the area represented by Defendant's Exhibit 1 if there was any other line drawn?

A On this same chart? in this same area?

Q In this same area and presented to the Canadians?

A No, not that I am aware of.

Q After you drew the line, do you know what its subsequent history was? Do you know if it was presented to the Canadians?

A I do not recollect.

Q Did you have anything to do with it after you drew it?

[9] A I submitted it to the then director of the Bureau of Commercial Fisheries.

Q And after that did you have any further participation in it?

A No, not that I recall.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BRADLEY:

* * * *

Q Who requested you to draw the lines you did draw in Alaska?

[10] A Mr. William Terry who was a member of the delegation at the meeting previously referred to, the United States delegation.

Q Did you redraw the line that was agreed to in the original meeting?

A Yes, I believe we did. I believe this is only a section of the total that I see here. It is my recollection that the line we drew at the meeting was on such a small chart that it didn't show much more than an indication of what we were thinking about, and I was asked then to draw it on a larger scale chart to show more detail.

Q Did the lines you drew enclose areas in which you knew foreigners had previously fished?

A Yes.

Q By drawing these lines did you intend to stop those fisheries?

A No.

Q Was the line you drew with Mr. Scutter intended to represent the outer limit of the territorial sea?

A No.

Q Was the line you drew with Mr. Scutter intended to represent the base line from which the territorial sea was to be measured?

[11] A No.

Q Were the lines you drew with Mr. Scutter used for law enforcement purposes while you were in Alaska?

A No.

Q Did the line you drew with Mr. Scutter correspond to the outer boundary line of the fishery district created under the provisions of the White Act?

A They may have coincided with them in areas, in some areas, but they were not specifically drawn that way.

Q So they were not intended—

A Not intended. This line was not intended to match in all respects.

Q When you sent the maps on which your lines were drawn to Washington did you include a caveat or disclaimer of any kind?

A Yes. In the letter of transmittal I pointed out this proposed line in our thinking was intended to apply to U.S. fishermen only.

* * * *

[3] DR. ROBERT D. HODGSON,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please.

A My name is Robert D. Hodgson.

Q And Mr. Hodgson, what is your address?

A 10720 Joyce Drive, Fairfax, Virginia.

Q That is your residence address?

A That is residence. My office address is Director, Office of The Geographer, Department of State, Washington. D. C.

Q And what is your age?

A Forty-eight.

Q And what is your present occupation?

A I am The Geographer of the Department of State.

Q What is your educational background?

A I have a Bachelor's, Master's and Ph.D. Degrees in Geography, all from the University of Michigan.

Q And have you had any former occupations which make use of this geographical education?

[4] A I was employed during the war as an intelligence officer and as an infantry platoon officer in the Marine Corps. Immediately after the war I went to work for the then War Department as a terrain analyst, a geographer. That was late 1946 to early 1947 in Germany. I taught geography at the University of Michigan from 1947 to 1951. From 1951 to 1952 I was a geographic analyst in the Government. From 1952 to 1957 I was geographic attache in the American Embassy in Bonn. From 1957 to the present I have been in the Office of The Geographer in the Department of State.

Q What particular positions have you held in the Office of The Geographer for the Secretary of State?

A During the first, approximately ten years, until Dr. Pearcy's retirement I was his principal assistant. Since his retirement two years ago I have been The Geographer.

Q Would you describe generally what the function of The Geographer of the United States is, what your duties are?

A Well, the functions of The Geographer are expressed very broadly in the sense that it is in charge of all geographical research required by the Department of State. In actuality it narrows down considerably to cover generally three fields; geographic nomenclate etymology, international boundaries and claims to sovereignty or jurisdiction [5] of national entities. Over the years we have produced many research studies for the Department. Many of them we have put in an unclassified form, either as international boundary studies, which cover land boundaries, or international boundary studies, Series A, which cover limits in the sea. We are essentially the research component concerned with problems in political geography.

Q You have just referred to a research study dealing with limits of the sea?

A Limits of the seas.

Q Do any of these studies within the category, and I believe you used a letter—

A Series A.

Q Series A. Do any of these studies deal with limits of the sea with respect to the coast line of Alaska?

A No. These deal with foreign countries. They are straight baselines, territorial water boundary agreements, or continental shelf boundary agreements made by foreign countries. In our work for the United States we have worked on a series of charts, 155 charts, which depict the U. S. baseline, territorial sea and contiguous elements, and Alaska is covered by those charts.

Q Would you characterize those charts as within the [6] category of research studies on international boundaries or what category in your particular function would you place that work product?

A These would fall into the general category of international boundary work that we would do for the Department of State.

Q With respect to that particular item involving the set of 155 charts, was there, apart from the meetings when these charts were discussed (I assume between you and others on a particular committee), apart from those meetings, was there any independent research that you or your office made concerning the matters pertaining to the coast line of Alaska?

A Well, the production of the maps and the charts was agreed upon, that the committee would follow certain established Federal practices, and that the hydrographic data which was represented on the series of charts that we chose would be accepted as authentic. Now, it was necessary to go beyond this, which would be considered normal mechanical, to determine if the United States had drawn any big closing lines for historic bays or made any other claims to waters of this nature. In this sense we went beyond the practices or beyond the work of the committee. We examined the records of the Department to determine if there had been any claims for [7] historic bays.

Q Was the research which you did in this particular area you have just described made the subject of any

written memoranda or communication by you or by anyone in your Department?

A The results of our work did not result in a written product, no.

Q Did you communicate in any other way except by writing to anyone concerning the results of your research in this particular area?

A We communicated to the then Assistant Legal Adviser, Mr. Yingling, and we also communicated to the members of the committee on the fact that we could find no claims to historic bays in the State of Alaska—

Q All right, I am going to get back—

A —in the records of the Department.

Q I have some specific questions to ask you on these charts and I will get back to that subject in a little while. You stated you had worked with Dr. Pearcy. Aside from this set of 155 charts, which I assume were the ones which were constructed or devised in 1970 and 1971—Is that the time span with which you were involved?

A That is correct.

Q Besides those, had you, during your period of time [8] with the Office of Geographer, ever participated in the drafting of any other charts showing or purporting to show the location of the coast line of Alaska?

A I had worked with Dr. Pearcy earlier on a set of charts illustrating a baseline for the United States if we adopted all of the pertinent sections of the Territorial Sea Convention. It drew in certain areas of the country, certain coastal areas, such as Maine, parts of Louisiana, and it drew certain straight baselines. There was a second set of charts which was done after this in which Dr. Pearcy had done some of the preliminary work and which I completed which were never accepted or never published. Then the third set of charts was the final published charts.

Q You refer to those as the set of 155 charts?

A That is the 155 which were the published charts which were done in 1970, 1971.

Q When was the first study for this first set of charts that you described as showing a possible baseline?

A These were drawn in the period immediately after the signing of the Conventions in 1958 and then in 1960. They were done in the period, I would gather, from 1963 to 1964.

Q Are any of those charts still in existence?

A The original of the charts is.

[9] Q Where are they located?

A I think they are all in my office.

Q Would you have any objection to either Mr. Rhodes or myself looking at those charts in your office?

A I would have no objection to that.

MR. CRANSTON: Mr. Charney, would you have any objection?

MR. CHARNEY: No.

BY MR. CRANSTON:

Q Now, when was the second set of charts that you described constructed?

A The second set of charts would have been started, I believe, somewhere around 1967 or 1968.

Q And, again, what was the intended purpose for your constructing these charts?

A I am not sure in my own mind exactly what the basis for it was. It was a request that was placed on Dr. Pearcy and I assisted him. I think the request came from the Coast Guard. The charts were not completed. I believe the Alaskan area was never finished.

Q And do these charts still exist?

A I think we have most of them but I wouldn't want to say we have all of them. I believe we have most of them because several of them were worked over for the latter set [10] of maps, and this set may not be complete.

Q Would there be any objection to Mr. Rhodes or myself examining these charts in your office?

A I would have no objection.

MR. CRANSTON: Mr. Charney, do you have any objection?

MR. CHARNEY: No objection.

BY MR. CRANSTON:

Q What was the name of the committee or the group which formulated the set of 155 charts?

A The full name of it, I am not sure exactly what it is. It is in my records. I referred to this as a Baselines Committee. It was a committee on the establishment of the baseline of the United States or something of sorts. How does that ring with you? I just don't remember the full name. Having gotten down to the point of working for a year, we referred to it just as the "Baseline Committee."

Q And you were on this Committee, is that correct?

A I was on that Committee.

Q What was your particular function on this Committee?

A It was my responsibility to produce the basic charts, the compilation, to determine the bay closing lines and the river closing lines and such other permitted closing lines, and to draw the Territorial Sea and Contiguous Zone of the United [11] States. I would do this in manuscript and submit it to the Committee. I would defend the lines that I had drawn. If there was an agreement for revision of the lines that I had drawn, then I made the revisions and represented them to the Committee to make sure the work was completed. From there they went to the National Ocean Survey for drafting and photography and printing.

Q Were there other members on this Committee?

A Yes. There were representatives from the Department of Justice, Department of Interior, Treasury, Commerce and State. That is all, I believe. All Federal offices with an interest in the law of the sea were invited to attend.

Q Do you know why, for instance, the Department of Justice was participating in this Committee?

A Well, the Department of Justice was participating because it is interested in the law of the sea as it is applied to the United States.

MR. CRANSTON: Would you mark an exhibit, for me, please. This is two documents stapled together; one document from Maurice Stans, Secretary of Commerce, to William P. Rogers, Secretary of State, dated May 26th,

1970, with another document stapled to it headed the "Department of State, The Legal Adviser; Memorandum to Mr. Neuman," with copies to Mr. Hodgson. [12] You can mark this as the exhibit.

(Documents marked Defendant Hodgson's Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson—Do you prefer to be referred to as Doctor?

A Any way you desire.

Q I wish you would look at the second page of this exhibit and I ask you if you have ever seen this?

A I probably have. I am almost positive I have, yes.

Q Who is the writer of that?

A Tex was—let me see if I can recall his name—Harris. What was Harris' first name? His last name was Harris. He was Special Assistant to the Legal Adviser.

Q Who is Mr. Neuman?

A Mr. Neuman, at the time, was the Assistant Legal Adviser for Political, Military and Ocean Affairs.

Q Was it your understanding, then, that the Department of Justice was to be represented on this Committee because of—I refer to the last sentence in the first paragraph—It has its "lawsuits against most of the coastal states"?

A This certainly is a part of it, but our interest in having Justice on board, and Justice was on an informal group that met on the early charts, was their knowledge of the [13] Supreme Court cases which had come about and which decisions had been made, such as in California, as to how we should draw the baseline in these areas.

Q But it was in part because of the pending litigation, you would say?

A I would say that it was in part because of litigation existing and pending.

Q What was the date that the Committee first met, approximately? When did this group organize?

A The time span of this is right about this time. It

is mid-1970. I think the Committee got its start probably about May or June of 1970.

MR. CRANSTON: Could you mark as Deposition Exhibit 2 a memorandum dated August 7th, 1970, to "Members, LOS Task Force Executive Operations Group," Carl F. Salans, Acting Legal Adviser.

(Document marked Defendant Hodgson's Exhibit No. 2 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson, I will hand you what has been marked as Deposition Exhibit 2. If you want, you may look it over.

A All right, sir.

Q Do those individuals who are listed at the bottom of [14] page 1 and the top of page 2 represent those persons who actually were members of the Baseline Committee?

A The membership of the Baseline Committee varies over the period of time. This is essentially the group that met in the beginning.

Q Can you, with respect to the beginning of the—

A Beginning with the Department of State, Mr. Shamwell and myself were at virtually every meeting. The Department of Justice, Mr. Swarth and Mr. Carney were at virtually every meeting. The Department of Interior, Mr. Cotter was at virtually every meeting. At one period he was also assisted by a chap from the then Bureau of Commercial Fisheries. The Department of Commerce, Admiral Nygren attended sporadically. Hugh Dolan attended almost continuously. In addition, the chap in charge of the charting section who did the drafting on the maps attended virtually almost every time, and in addition there was a young National Ocean Survey officer who attended. Under Transportation, Admiral Morrison and Captain Bursley attended the first several meetings and then didn't attend beyond that. Lieutenant Michael Reed attended virtually every meeting or was replaced by a Deputy during the latter sessions. So, essentially, with the exception of the Admirals and the

Captains, these were the people who met almost continuously.

[15] Q You referred to somebody from the Bureau of Commercial Fisheries. Do you remember who that was?

A I don't remember his name but I could look it up in the records.

Q Does he reside here in Washington or elsewhere?

A He did at the time but I haven't seen him recently. I don't know whether he is still here or whether he has left the Government service.

Q Now, in the Department of Justice were there ever any other individuals except Mr. Swarth or Mr. Charney on the Committee?

A Bruce Rashkow attended several meetings. It is possible that Michael Reed attended one meeting or so.

Q Is this Michael Reed the same—

A After he left the Coast Guard. But that would be it. It would be Mr. Swarth and Mr. Charney.

Q In other words, Lieutenant Michael Reed, who was with the Department of Transportation, later went to the Department of Justice?

A Yes.

Q And appeared on the Committee?

A I believe he appeared at least at one meeting and he may have appeared at two.

[16] Q Who appointed the members of the Committee?

A The members of the Committee were appointed by the individual Departments.

Q I see. In other words, you were appointed by the Secretary of State?

A Appointed by the Department, yes, sir, along with Mr. Shamwell to represent the Department in the operations.

Q Did the Committee have a chairman?

A Yes, Mr. Shamwell was chairman.

Q And what is his function or what was his function in the Department of State at the time?

A At the time he was Attorney Adviser in the Office, the Assistant Legal Adviser for Ocean Affairs. When the

first memorandum came, it was called political and military and oceans. And then later it was divided between two Assistant Advisers, one for military and one for ocean affairs, was in ocean affairs.

Q Has the work of this Committee been completed?

A No, the work of the Committee still goes on because the charts, as it states on them, are preliminary and subject to change in information. They will be reviewed. Whenever a new chart is published, for example, which will show a new depiction of the coast line, the outer limit of the [17] territorial sea, and the contiguous zone should be changed and will be changed. I will do the work. The Committee will be called together for review and then the sheet will be published as a revised sheet.

Q Has the Committee met since the formulation of the 155 charts as they presently exist?

A Yes, it has met several times because several sheets, I believe there are four of them, are in the process of revision. On one there was an error wherein the three-mile territorial sea was omitted. On a second sheet—these two are in Alaska—information has come to our attention that what was symbolized as a submerged rock is a low tide elevation. So we are changing these two charts for Alaska.

Q Would you know what particular portions of Alaska these charts relate to?

A One of them is in the southwest corner of the Alexander Archipelago, and the second is in the northeast corner of the Gulf of Alaska.

Q Would it be east of the Cook Inlet area?

A Yes, it is east of the Cook Inlet area.

Q Would you characterize it as being near Yakutat?

A It is an isolated large-scale chart which is east of —I can't remember the name of the big inlet which is at [18] just the northern point of the Gulf of Alaska.

Q Prince William Sound?

A Just east of Prince William Sound. Thank you.

Q I see.

A And one of the symbols on the chart indicated that a feature was a submerged rock, and it proved to be a

drying feature and we extended the territorial sea in that area.

Q What was the problem down in the Alexander Archipelago?

A In the original drafting by the Coast Survey of our work sheet they failed to copy the three-mile territorial sea about several small islands. The 12-mile contiguous zone is on the charts. I didn't catch it in the review and, consequently the sheet was published without a territorial sea limit on it.

Q You earlier indicated, I believe, that the Committee's decisions were intended to be only provisional, is that correct?

A That is correct.

MR. CRANSTON: Would you mark as Deposition Exhibit 3 a three-page, undated document entitled, "LOS Task Force Committee on the Delimitation of the Coastline of the United States."

[19] (Document marked Defendant Hodgson's Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I will hand you Deposition Exhibit 3. You may take some time and look it over, if you wish.

A Yes.

Q You have read the memorandum?

A I have.

Q Does this memorandum express fairly well the purpose and duties, and objectives of the Baseline Committee?

A Yes, I would say so.

Q All right, I would refer you to page 3. Let me first ask you, have you ever seen this document before today?

A Yes, yes.

Q Can you tell me something concerning its origin. In other words, do you know who drafted it?

A It was drafted by the Baseline Committee as a statement of its purposes and functions.

Q Was it drafted at one of the first meetings of the Committee?

A One of the early meetings.

Q Was it sent to any other agencies of the representative [20] agencies in order to advise those agencies what the Committee was doing?

A Well, it was sent to all agencies which had representation on the Baseline Committee.

Q For instance, who in the Department of State would have received this memorandum?

A Well, I would have received it. Mr. Shamwell would have directed it to the Assistant Legal Adviser for Ocean Affairs. It may or may not have been to Mr. Steven's office, the Legal Adviser. I don't know. It would have also been seen in State and was also seen by the Special Assistant for Fisheries and Wild Life.

Q This would have been Mr. McKernan?

A Mr. McKernan because members of his staff sat in on various meetings at various times.

Q Do you know and if you don't know, of course, simply say so, do you know who in the Department of Justice may have received this memorandum?

A I wouldn't have the faintest idea other than Mr. Swarth and Mr. Charney.

Q Do you know of any representative agencies that suggested modifications or in any way criticized the functions of the Committee and its purposes as they are set forth in [21] this memorandum?

A If I understand your question correctly; there were many changes which were made and which were suggested in the language for various purposes by various people, but I wouldn't specifically remember as to whether I would make a suggestion of one form and someone else would make one of another. I know that, for example, the then Coast Survey, now National Ocean Survey, every time the word "map" was used it was insisted it had to be changed to "chart." But there were substantive changes which were proposed by, I presume, every office. I don't remember the details anymore.

Q Were those changes incorporated in a memorandum which superseded this memorandum?

A I think this is the final one, if I remember correctly. I would have to check with my records to find out. Since it is undated I find it—

Q Would you be willing upon request of the State at this time to search your records to determine whether or not this memorandum is represented by or superseded-by some other memorandum?

A I would be willing, yes.

MR. CRANSTON: Mr. Charney, do you have any objection to this?

[22] MR. CHARNEY: No.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q I will refer you to this sentence on page 3. It appears in the paragraph that is continuing over from page 2. This sentence: "It is not intended that the charts resulting from the Committee's work will be circulated throughout the Government, even as a provisional United States position, but rather will be available for use when current and pressing problems arise. Such use will be conditional by the relevant caveats." Did any of the representative agencies or departments suggest a revision in that particular portion of the memorandum?

A I don't remember specifically but it is obvious that some did.

Q Why is it obvious?

A Because they were published.

Q Would the fact that you suggest be reflected in any written correspondence between you or any other member of the Committee and the Committee or any other agency and the Committee?

A I don't think it would be. I just don't know. I could check to find out, but I don't know.

[23] Q Let me back up. You say that charts were, in fact, published?

A Yes, the 155 charts were published. They are available.

Q Do you know, then, from what agency the suggestion would have come to publish the charts; that is, which would have reflected a modification of this memorandum?

A I wouldn't specifically know but I can think of two that would require a change. One would be myself in the Department of State where we were receiving many requests from foreign governments for charts, and the second would be from the Coast Guard which was after a set of charts which they could use for law enforcement.

Q Do you recall yourself specifying any particular change in this one paragraph?

A I don't recall. It was so long ago.

Q But I assume that when this particular memorandum was drafted you participated in the formulation of it, did you not?

A Yes.

Q So, at the time this memorandum was drafted it had your approval, is that correct?

MR. CHARNEY: Objection.

[24] MR. CRANSTON: May he answer that question?

MR. CHARNEY: Yes.

THE WITNESS: I don't recall. To be honest with you, I don't recall.

BY MR. CRANSTON:

Q Do you ever recall disapproving this memorandum?

A I would have to examine the records of my office to determine if there are any marks which were made on this paper which are in my handwriting for me to know.

• • • •

[25] Q Would you agree with this, Dr. Hodgson, that if this sentence which we are discussing was changed that it was a rather basic and important change relative to the functions of the Committee as outlined in this memorandum?

A Not basically in the functions of the office but certainly in the utilization of the work of the office.

Q You say it would not be important as to the work utilization?

A It would not be a major change in the basic functions of the Committee whose purpose was to draw upon a set of large-scale charts U.S. baselines, Territorial Sea and Contiguous Zone. Under either premise we would do the same work. But with the change in this, the work

would go from either just a single manuscript copy or a limited number of manuscript copies held in a limited number of areas to a published work with wide distribution. There certainly is a very different view in the use of the Committee's work but not in the Committee's work per se.

Q So you would agree that it is a rather substantial change relative to the utilization of the Committee's work product?

[26] A Yes.

Q And at this point you cannot tell me, then, first, if there was any authorization and, secondly, who may have authorized the particular change reflected with regard to this sentence?

A No, I cannot.

Q Did this Committee consider among other aspects of the coast of the United States the location of the coast line in Cook Inlet, Alaska?

A It did.

Q Did you know when you were on this Committee that either at its inception or at any time subsequent during its existence and before the distribution of these maps that there was pending litigation between the State of Alaska and the United States Government relative to the status of Cook Inlet as inland waters?

A I knew that there was a difference of opinion between the State and the Federal Government concerning the status of Cook Inlet because Mr. Yingling had asked our office to do research on the records of the Department as to whether we could find any indication of an historic claim. I don't know whether I knew before the Committee started that there was pending litigation, but I certainly knew during the period of the [27] litigation.

Q Would you have any idea at what time during the— For instance, as I understand, the Committee met every so often and you considered selected portions of the United States coast, did you not?

A Portions which I had completed since the previous meeting, yes.

Q Now, at the time of the discussions of the Cook Inlet portion, would you say that you were aware of the pending litigation?

A I can't specifically say.

Q It might aid you if I told you that the Cook Inlet portion of the coast was discussed on August 31, 1970, and, apparently, the first meeting of the Committee was on June 1, 1970?

A I would think by August I was aware of it, yes.

MR. CRANSTON: I would like marked as Deposition Exhibit 4 a memorandum dated December 29th, 1949, to L/P-General Snow, OIR/GE-Mr. Boggs, and others, from UF/-Dr. Chapman. "Subject: Charts of U.S. Coasts Showing Limits of Territorial Waters."

(Document marked Defendant Hodgson's Exhibit No. 4 for identification.)

BY MR. CRANSTON:

[28] Q All right, Dr. Hodgson, I will hand you this memorandum marked as Exhibit 4. I apologize for its rather faded character but this is the best that the Department of State could furnish us. I would ask you to take some time and read it. Have you read it?

A I have read it.

Q Let me note that my research indicates that Dr. Chapman was Special Assistant to the Under Secretary for Fish and Wild Life, and that this memorandum concerned a proposal to the Coast and Geodetic Survey that charts as to limits of territorial waters be drafted. Let me also note that the memorandum was written during pending litigation between the United States and California. Now, let me ask you one question. Was Mr. Boggs at that time The Geographer for the United States?

A Yes, he was.

Q Did he hold essentially the same position that you do now?

A Yes, he did.

Q All right, let me ask you this question relative to the statement made after the numeral two on page 1 and continuing over to page 2, which states, "There may be

some question of propriety for a Federal Agency to publish such an overprinted [29] line with a case turning upon the position of the line now in litigation with the Government as party to this suit. It is to be noted that the 1930 Series of Coast and Geodetic Charts as cited by the Government in its present brief as evidence of the position of the line." Do you disagree with the conclusion which Dr. Chapman stated relative to the propriety in publishing an overprinted line as to the location of a coast line when that coast line is in dispute between the State involved and the Federal Government?

MR. CHARNEY: Objection.

MR. CRANSTON: May he answer the question?

MR. CHARNEY: Yes.

THE WITNESS: I don't know on what basis Dr. Chapman was questioning the propriety. If it is a question of legal, then I am not a lawyer. I am not in a position to answer the question. If it is a question of bureaucratic propriety, I would disagree with him. I would say that the Federal Government had every right to go ahead and print such a set of maps, recognizing that if the Supreme Court litigation was to the contrary that the maps would have to be changed?

BY MR. CRANSTON:

Q Let me ask you this, if you know. Do you know whether or not there was a set of maps or charts of the United [30] States coast showing limits of territorial waters printed subsequent to December 29, 1949, and before the distribution of the set of 155 charts?

A There was not to my knowledge.

Q In other words, you feel that what may have been an impropriety with respect to California is a propriety with respect to Alaska?

MR. CHARNEY: Objection.

Q Do you see any distinctions between California in 1949 and Alaska in 1971?

THE WITNESS: I don't know that the charts were not made for the reason which is suggested.

BY MR. CRANSTON:

Q Let me ask you this: Are you aware that the chart drafted by the Baseline Committee has been submitted by the United States Government in this case as an exhibit, Exhibit No. 73?

A I was not aware of it but I would expect it would be.

Q Would you then expect that it would be the function of this Committee through the drafting of the chart as it affects Cook Inlet to attempt to influence the court relative to any decision it might reach in this litigation—

MR. CHARNEY: Objection.

BY MR. CRANSTON:

Q —that is pending?

[31] MR. CHARNEY: Objection.

MR. CRANSTON: May he answer the question?

MR. CHARNEY: Yes.

THE WITNESS: Would you restate the question?

MR. CRANSTON: Read the question back.

(Question read)

THE WITNESS: I would say that the function of the Committee and the manner in which the Committee proceeded was not intended to exert any influence on the court or upon any questions at hand. It was to produce a series of charts which portrayed the U.S. Baseline, Territorial Sea and Contiguous Zone according to the tenents of the Geneva Convention on the Territorial Sea and the Contiguous Zone applying United States' stated policy decisions to the best of our manner. The idea of myself, for example, as the principal drawer of lines on the charts, was that I would in no way influence nor intended to influence any decision of the court.

• • • •

[32] Q Let me ask you this: Were you aware at the time the chart was prepared in August of 1970 as to Cook Inlet where the Federal Government in this litigation claimed the closure line of Cook Inlet to be?

A The chart, the Alaska chart, was probably prepared long before August, 1970. I don't know the date that it

was prepared. But in the go-around, the work which led to the final printing of maps, I began with Alaska. We were, as I recall, completed with the Aleutians when we were presented with the formidable task of trying to do a new series of the One Hundred and Fifty Thousands which cover the northern coast of Alaska, and we decided that we would switch to the Atlantic Coast because it was needed and we started on the Atlantic Coast before we completed the Alaskan charts. Then there was a request that we complete the Alaska charts because I believe it was Senator Stevens who had asked in one of the Commerce subcommittee meetings what would be the effect of the President's seabed proposal on, for example, the State of Alaska. So we were asked to produce a map. To do this we had to go back and complete the Alaskan series so that we could determine what the Alaskan territorial sea was as far as bay coastlines, and so on, and to put this on another chart within [33] the Continental Shelf so that we could present it to Senator Stevens. Consequently, the Alaskan charts were begun far before the period of August of 1970.

• • • •

[34] THE WITNESS: Going back to the original question of propriety versus impropriety, if it is a question of legal propriety, again, I am not in a position to answer this. In a question of bureaucratic propriety, we were in the process of evolving or devolving a set of baseline charts for the United States. The series of charts did not have their genesis because of the court case. They had their genesis in the need for these charts by the Coast Guard and by the Department of State to give to foreign fishermen. Consequently, the production of the charts and their ultimate use by the Department of Justice in this suit, I don't think is bureaucratically improper. If we were to produce a series of charts specifically for that purpose, then there might be a question of impropriety.

Q Let me ask this: Did you ever know, either personally or by reputation, Dr. Chapman who wrote this memorandum Exhibit 4?

A I knew him just in passing.

[35] Q Do you know whether or not he was a lawyer?

A To my knowledge, he was a marine biologist. He was a Fishery Man.

Q Would you believe, then, in paragraph two when he is talking of propriety, he is referring to, as what you refer to, as bureaucratic propriety rather than legal propriety?

MR. CHARNEY: Objection.

MR. CRANSTON: May he answer?

MR. CHARNEY: Yes.

THE WITNESS: I have no idea what Dr. Chapman had in mind in submitting it to the Legal Adviser. This would raise the question of legal in my mind.

BY MR. CRANSTON:

Q You testified that you would expect the chart to be filed in this case, did you not, earlier?

A I don't know whether I used the word "expect" or I used the word "anticipate," but I would anticipate that it might be.

Q So, you, yourself, then would feel that there is nothing wrong with the United States attempting to use the work product of this Committee deliberating after the filing of this lawsuit to influence the court in its decision in this case?

[36] MR. CHARNEY: Objection.

MR. CRANSTON: Do you want to read the question back?

(Question read)

THE WITNESS: The set of maps as were produced, reflected the position of the Federal Government in relationship to the baseline, the territorial seas and contiguous zone of the United States. As a result, they are published documents. They are published documents of the Federal Government. They are available as evidence. I would assume that they could be used.

BY MR. CRANSTON:

Q So then, you do not disagree with that question? In other words, you see no impropriety from a bureaucratic standpoint—

A I see no basic problem.

Q —in the use of this document attempting to influence the decision of the court?

MR. CHARNEY: Objection.

MR. CRANSTON: All right. May he answer?

MR. CHARNEY: Yes.

THE WITNESS: I see no basic problem.

MR. CRANSTON: Would you mark as Defendant's Exhibit 5 a set of two documents which bear the notation on the right- [37] hand margin "U. S. Exhibit 73 (P.1)" and another document with a notation in the right-hand margin, "U. S. Exhibit No. 73 (P.2)," the first one being a chart of "Cook Inlet, Southern Part, U. S. Coast and Geodetic Survey Chart 8554, 11th edition, April 1/70, corrected through notice to Mariners 16/70"; and the chart with the notation Exhibit 73 (P.2) being "U. S. Coast and Geodetic Survey Chart 8553, 11th Edition, January 17th/70, corrected through notice to Mariners 3/70," and each of them containing a box with the heading: "Caution: This Document Is Not For Use In Navigation," with a text underneath. Let us call five, page 1, 5(a) and page 2, 5(b).

(Documents marked Defendant's Hodgson's Exhibit No. 5(a) and 5(b) for identification.)

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I will hand you what has been marked Defendant's Exhibit 5(a) and 5(b) which is also the United States Exhibit 73 in this litigation, and I ask you if you recognize them?

A Yes, these are duplicate copies of two of the charts of the baseline maps of the United States.

Q And these are the charts, are they not, which represent the work product of the Baseline Committee?

A They are two of the chart, yes, sir.

[38] Q Now, do you recall whether or not you participated in any of the discussions of the Interdepartmental Committee relative to the drafting of this particular set of two charts?

A I drafted this set of two charts.

Q Now, by that, do you mean that you physically placed the lines which appear in black upon the charts? Or, I guess what I want to know is, what do you mean when you say you drafted them? What did you do?

A I did the basic compilation work which was taking the original master copy and putting upon it the pencil lines for the bay closing lines, the three-mile territorial sea, and for the 12-mile contiguous zone. These were presented to the Committee. I can't honestly tell you, I believe that the changes may have been made on some of these sheets—I don't remember specifically, but—

Q Let me ask this: If changes were made from what your proposal in the form of penciled lines was, have you stated accurately what you did? You placed pencil lines.

A Yes.

Q If there were any changes made with regard to your penciled lines, would those changes and the reasons for them have appeared in the minutes of the meeting at which these charts were discussed?

[39] A If there were changes, it would be, yes. They should be in the minutes.

MR. CRANSTON: Would you please mark as Defendant's Deposition Exhibit 6 this document consisting of numerous pages with a preface, "Ad Hoc Committee Demarcation of the United States Boundaries, Minutes of June 1, 1970, Meeting," and with documents thereafter consisting of minutes of subsequent meetings through and including January 4th, 1971. There is also appended to this set of minutes a document consisting of four pages headed, "U. S. Baseline Documents" with numbers, edition date and revised printed date.

(Document marked Defendant Hodgson's Exhibit No. 6 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson, near the middle of this exhibit, I will hand it to you, are the minutes for the August 31, 1970, meeting.

A August 30.

Q August 31?

A All right, I have found it.

Q All right. On page 2 of those minutes, Item 8 refers to chart Nos. 8553 and 8554. Do you want to take some time? You may refer to that. Have you familiarized yourself with [40] the reference?

A No, sir, I haven't gotten up to the—

Q My question is respecting the notation in the minutes of the August 31 meeting at paragraph eight. Would the variance or the revision referred to in those minutes be only revision which was made concerning the penciled work product which you furnished the Committee?

A It should be, yes.

Q Do you recall that there were any other revisions which the Committee discussed?

A I just don't recall.

Q But you do indicate that if there had been that it would most likely have been reflected in the minutes?

A That is correct.

Q Now, when you prepared your penciled work product with respect to these exhibits, what criteria did you use in order to determine where in Cook Inlet the baseline should be located?

A The criterion that we used on drawing bay closing lines was the 45-degree test which is mentioned in here. In this closing of Cook Inlet on one of the earlier series of maps we had drawn a line similar to this in the sense that we had gone from Harriet Point to Kalgin Island over to the [41] east shore but it was north of the point that was chosen here. In experimenting and developing out from this line and experimenting, this line gave, it was felt, the maximum amount of water which could be included in the 24-mile fallback line.

Q Mechanically, what did you rely on for your basic criteria when you drew these lines? Did you have any reference to any legal documents or any other matters which you considered when you placed these lines on the chart?

A No, I had no reference to anything written in that sense other than the previous set of charts. Now, as to any mechanical devices, we didn't use any. We did it on the basis of visual observations and had one been able to draw a 24-mile line across, not using the islands, it

would have been obvious that we would have had to make some form of measurement.

Q I guess maybe I am not making my question clear. Maybe I can approach it this way. What caused you at the outset concern with the 24-mile line? What started you out—

A I am sorry. Okay. In looking at this I concluded that Cook Inlet was an over-large bay and in the Territorial Sea Convention you are permitted to close off an over-large bay with a 24-mile closing line and this has been one of our policy agreements or one of our agreements in the drawing of [42] the lines in on the charts. So we sought a 24-mile fallback line in the idea that Cook Inlet was an over-large bay.

Q Is this term "over-large bay" a word of art in your profession or what do you mean by that?

A It is a coastal feature which has the characteristics of a bay but which the closing line across the natural entrance points would be greater than the 24 miles permitted by the Convention and we would then be permitted to fall back.

Q In other words, you would term any bay which has a closure line in excess of 24 miles, and I guess assuming that it meets the semicircle and the semicircle test in an over-large bay, is that how you characterize the definition of an over-large bay?

A Yes, provided that it contained landlocked waters as well.

Q In other words, part of the definition of an over-large bay is that it is landlocked?

A Yes. That it contained landlocked waters.

Q What is your definition of landlocked waters?

A Landlocked waters are waters which are sufficiently closely linked with the land so as to be considered to be a part of or enclosed by the land.

Q Is this the definition that by referring to Cook [43] Inlet as an over-large bay you apply to Cook Inlet?

A Yes.

Q Now, I assume, then, when you referred to the use of a reliance upon and recognition of a 24-mile—a reference to a 24-mile line that, you were referring to the Convention on the Territorial Sea and Contiguous Zone, is that true?

A That is correct.

Q Now, when you constructed your penciled lines in Cook Inlet, did you consider or rely upon the provisions contained in Article 7, Section 6 of the Convention on the Territorial Sea Contiguous Zone which makes provision for historic bays?

A No.

Q That is to say that when you prepared your lines that you made no reference to any of the historic activities which the United States engaged upon or may have engaged upon in Cook Inlet?

A I think I stated earlier that we had been asked at one time by Mr. Yingling to examine the Department's records if the United States had claimed Cook Inlet as a historic bay. In that the essence of our examination was negative, we considered it then to be a geographical feature at which we could draw a 24-mile closure.

[44] Q You then relied in this particular facet of your work, that is the historic bay aspect, if any, as to Cook Inlet, you relied on the work product of the Office of Legal Adviser for whatever input they might give to aid you, is that correct?

A That is correct.

Q You did no independent research yourself into this matter?

A This was a task which Pearcy and I both worked on. I examined the records which our office has maintained more or less continuously back into the '20's. Dr. Pearcy was to examine the records of the Department. Now, what procedures he followed, I don't know. This was done while he was still there. I reported my findings as negative. I know we informed Mr. Yingling that they were negative. And we did not find any claim to Cook Inlet as a historic bay and—

Q What sort of records, what was the nature of the records that you examined? I assume by the words "our office" you are referring to the Office of The Geographer?

A Yes.

Q What sort of records were you examining?

A We were examining memoranda, correspondence, formally prepared papers, letters and the like.

[45] Q Are the records which you examined still in your office? Or had they been retired to some other agency of the Department for the Government?

A No, they should still be all there. We have not retired this section of our files.

Q What is the volume of these records, if you can estimate?

A Oh, it is a part of a file drawer.

Q Two linear feet, maybe?

A Less, probably.

Q And that would be the extent of the records which you examined in your office?

A Which I examined.

Q Yes. Are any of these records classified, restricted?

A I am sure that some are.

Q Would you have any objection to those which are not classified or restricted for allowing either Mr. Rhodes or myself to examine those records?

A I would have no objection providing I have sufficient advance warning to go through them and to remove classified material.

MR. CRANSTON: Mr. Charney, do you have any objection?

[46] MR. CHARNEY: I would like to ask Dr. Hodgson a question.

MR. CRANSTON: Yes.

MR. CHARNEY: Dr. Hodgson, do those records include correspondence with the Department of Justice?

THE WITNESS: Oh, yes, I am sure they do.

MR. CHARNEY: Concerning cases in litigation at the time they were written?

THE WITNESS: Probably.

MR. CRANSTON: Do you want to read back that exchange, please.

(Record read)

MR. CHARNEY: I won't permit those to be divulged. I don't know the nature of the other documents and I cannot answer at this time as to the others.

BY MR. CRANSTON:

Q You said you found no evidence of a claim in your files. When you talk about a claim are you referring to a statement by either the Secretary of State or the President that in so many words in writing we claim that Cook Inlet is a historic bay of the United States and that this has in some way been disseminated publicly? Is that the sort of thing you were looking for?

A Yes. And listings of historic bays or claims to [47] historic bays like waters which the United States may have made giving specific listings prepared by competent authorities.

Q Did you look for any material other than that which might have been used as evidence to support a claim for a historic bay as distinguished from a claim, itself?

A Our files would not ordinarily carry an extensive amount of that type of material.

Q You say they would not ordinarily. Do you recall whether in this particular case they did or they didn't?

A I don't recall.

Q What generally was the nature of the materials that you did look through? What type of general material was it, would it have been, for instance, correspondence between the State Department and the Bureau of Commercial Fisheries or Fish and Wild Life Service? Would that normally be contained in your file?

A There would be some of this. There would be reporting. There would be research documents. There would be memoranda from the Legal Adviser to someone else, to another office, perhaps to us. The files applied to the United States Territorial Sea; consequently, they would cover a wide range of material from a wide range of sources. There might even be newspaper clippings in it.

[48] Q Would interdepartmental correspondence of some other department such as Interior or Commerce or any of its sub-agencies appear in your file to any great extent?

A Not to any great extent. By that, if you mean from Interior to Interior or Interior to Commerce, not to any great detail.

Q Or even subagencies of Interior such as Interior Fish and Wild Life Servive to Interior something else?

A No, there would not be.

Q Now, you stated that Dr. Pearcy researched other records of the State Department, is that correct?

A That is my understanding.

Q Is it fair to say that generally for purposes of your drawing these charts which are represented by Exhibits 5(a) and 5(b), that your primary reliance was upon the response received in this area, that is the historic bay aspect from the Office of Legal Adviser and Mr. Yingling?

A There is a letter in the files from the Legal Adviser named Mr. Chayes.

Q To Mr. Barry?

A To the Attorney General, I believe, which indicated that the Department of State could not consider the historic claim of Cook Inlet to be valid.

[49] Q Would this letter, do you recall, have been written sometime around 1962?

A Mr. Chayes was appointed by Mr. Kennedy so it would be in that period of time.

Q And apart from what you have testified to today, you considered nothing else concerning the historic bay aspect of Cook Inlet?

A I did not do a full archival search for material.

Q Was the potential status or possible status of Cook Inlet as a historic bay or any other matters relating to the subject of historic bays and Cook Inlet discussed at any of the meetings of the Baseline Committee?

A Yes. It was discussed at several of them because the drawing of the closing line, for example, across Long Island Sound is dependent upon its being considered by the U.S. Court to be historic bay like.

Q My question simply referred to Cook Inlet and not to other bays.

A No. No. I am not sure that the subject ever arose in the sense that I had the data or felt I had the data which indicated that the Department of State did not consider it to be a historic bay and consequently I treated it strictly as a geographic feature.

[50] Q And then the Committee, in turn, with the one exception which we discussed earlier in Chinitna Bay relied upon your work product?

A If that is what the minutes indicate that is my recollection.

Q Now, would you turn to the minutes of the meeting that would appear near the end of the exhibit which I gave you of December 7th, 1970, and if you would just consult those pages and also the minutes of January 4th, 1971.

A All right.

Q Those minutes generally, do they not, refer to the status of waters off the east coast and particularly Long Island by virtue of a historic bay treatment?

A This was the ultimate decision. I was making my case as reflected in the minutes on the basis of geographic considerations in which I virtually, unanimously by agreement was overruled.

Q Now, had the possibility of Cook Inlet's status as a historic bay been discussed by the Committee would similar minutes noting that possibility have appeared in the minutes of the Cook Inlet discussion?

A Yes, they should.

Q Now, let us refer again to Exhibit 5(a) and 5(b). I [51] would direct your attention to the 24-mile fallback line. Is the line insofar as it is drawn from the east shore of the Inlet, that is slightly north of a community, Ninilchik, is the point where that fallback line intersects the shore based on any prominent shore line feature in the inlet?

A No.

Q What is the basis upon which you concluded that the southeast point of the line should reach the shore at Ninilchik?

A Because the sum of the length of the line extending from Harriet Point to the unnamed point on Kalgin Island and then from the unnamed southeast point on Kalgin Island, the sum total of these two lines to this point of reference, Ninilchik is 24 nautical miles.

Q Then it is not a point that is chosen because it might be discernable and recognizable as a shore line feature, for instance, to a mariner fishing in Cook Inlet?

A No, it was chosen to include the maximum amount of water within Cook Inlet within a 24-mile line.

Q Is this a point which a mariner on Cook Inlet might be able to discern as a point marking the termination of the 24-mile fallback line in Cook Inlet?

A No.

* * * *

[54] Q Dr. Hodgson, in the matter of Long Island Sound which you state was ultimately decided to be historic waters, is that a fair statement of the decision of the Committee?

A Well, a historic bay like a body of water, you know.

Q Did you find or are you aware that anyone else on [55] the Committee found evidence of a claim by the United States to Long Island Sound as historic waters?

A Well, the term "historic waters" always confuses me. My understanding is that one can claim a historic bay but not a historic sea or historic strait or what-have-you. It is restricted to historic bays, and that claims are to bay or bay-like bodies of water. And our treatment of bays is that they are historic bays or bay-like waters. I don't know what you mean by historic waters.

Q Well, did you consider Long Island Sound as a bay-like water?

A This was the pronunciation as I recall it, of the court in the 19th Century that found Long Island Sound bay-like and to be historic.

Q In other words, is it a fair statement, then, to say that the decision as to Long Island Sound was based upon a court decision?

MR. CHARNEY: Objection.

MR. CRANSTON: All right. Well, can he answer the question?

MR. CHARNEY: Okay.

THE WITNESS: Well, you are asking me to give the reasons of the individuals who voted for it versus myself who [56] voted against a line. And it is rather difficult for me to say what motivated each individual. I tried to maintain that because of the geographic size of Long Island and the narrowness of the water body which separated it from the mainlaind in the west that Long Island Sound was geographically a bay, and that a line should be drawn from Watch Hill Point to Montauk Point which

would include not only all of what is Long Island Sound but a large segment of what is listed as Block Island Sound. The mass of the Committee did not agree with my presentation unless it was agreed by myself that East River was indeed a river. And I said that East River was not a river. It was a tidal estuary; whereupon, the whole geographic case collapsed and then it went back to the point that the only line that could be drawn was one drawn on the basis of historicity of a historic bay. And the case, as I recall, specified Orient Point on Long Island and Fishers Island which was at New York on the northeast extremity of the Sound and then I drew a line between Orient Point and Fishers Island which met the criteria that we have been using in the past.

Q You have used the term "historicity." Do you know whether or not included within this historicity, which I take to be a mass of data or the entire historic aspect of it, was [57] a written statement by the Secretary of State or the President giving due notoriety to foreign governments and others that Long Island Sound is a historic bay or is claimed by the United States to be its inland water or any similar type document?

A The evidence, as I recall, was from various sources. One was a court case which occurred, as I recall, around the Civil War. The second was correspondence in the Executive Department. I don't recall whether it was in the Secretary of State or the Attorney General or the Legal Adviser to the Attorney General or one of those two people to someone else, but there were letters in the file indicating this. and it was also listed in quite a few books, Jessup's as I recall, "Historic Waters" and it was listed in the United Nations documents that were prepared on historic bays for the 1958 Convention.

* * * *

[59]

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. CHARNEY:

* * * *

[111] Q Do they illustrate policy decision?

A Yes, this is their purpose, is to illustrate policy decisions which have been made by the United States Government [112] concerning its territorial sea and contiguous zone.

Q When you speak of the United States Government, what are you speaking of?

A In this establishment of the limits of the United States, I am speaking primarily of the Executive Offices of the President and of the Department of State. It is considered that the establishment of the boundaries of the United States falls within the purview of foreign relations.

Q What would happen if the United States changed its policy in respect to the limits of the territorial sea upon the location of a baseline?

A These charts would be revised as soon as possible or practical, I should think.

Q Are these 155 documents including Defendant's Deposition Exhibits 5(a) and (b) for sale to the general public?

A They are for sale through the National Ocean Survey in Rockville, Maryland.

Q Are they for sale to foreigners for foreign governments?

A They are for unrestricted sale for anyone who cares to purchase them.

Q Have they been distributed to any foreign governments?

A They have been.

[113] Q Who has distributed them?

A My office has distributed copies to the Governments of Canada, United Kingdom, Poland, Soviet Union, in their entirety; and there was a plan, I don't know whether it was ever consummated, for their transferal to the east coast of the United States to the Government of Cuba which was not done by my office but by the Office of Coordinator for Cuban Affairs. Consequently I don't know whether they ever did it. I know they intended to.

Q Why were these documents given to foreign governments?

A Because we had specific requests from these governments for the charts because of fishing activities of their nationals. The Canadian Government received them, not because of the fishing activities, but because of their interest in the United States territorial sea and contiguous zone.

Q What relation do these maps have to the fishery activities of these foreign nationals?

A In depicting the outer limit of the contiguous zone, they depict the United States exclusive fishery zone.

Q If other foreign governments asked for descriptions for the limits of the territorial sea or contiguous zone of the United States, what would the response of the Department of State be?

[114] A Well, the response of the Department would probably be to submit to the Government a set of these charts and say that these charts are a depiction thereof.

* * * *

[144]

FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

* * * *

Q All right, looking at Exhibit No. 5, Dr. Hodgson, would you characterize, first of all, Cook Inlet as being an avenue which would lend itself to foreign commerce, or a bay which would lend itself to foreign commerce or a way between nations?

A In the last sense, "in a way between nations," the [145] answer would be no. In the sense of foreign commerce it depends upon your definition of foreign commerce that any ship coming out of there going to a foreign area would be foreign commerce I assume. Coming from a foreign area to here, I presume would be. As an avenue to another nation other than called for by the last two, no.

Q Is that statement you made because Cook Inlet is actually in essence surrounded by land of the State of

Alaska? You have used the term "landlocked." Landlocked within the State of Alaska?

A The answer to the question I gave is primarily that it is a bay contained within a territory of one state or one nation. And this is not a direct access going from its mouth to its head to a foreign country.

Q All right, but you have—

MR. CHARNEY: Off the record a second.

(Discussion off the record.)

BY MR. CRANSTON:

Q You have used the term "landlocked" as applicable to Cook Inlet, have you not?

A Yes, I did use it.

Q Now, in referring to the land, I suppose, within which it is locked you are referring to land of the State of [146] Alaska?

A Yes.

Q There is no other land which would apply to Cook Inlet?

A No.

Q You indicated that you had discussed this case with foreign governments. At least my notes indicate you have testified in this area. Have you, in fact, discussed this case with members of foreign governments?

A I have not. I don't believe that I answered that I had discussed the case with foreign governments. As I recall the context, I was asked the question of would or did foreign countries watch litigation such as this for examples or for specific data on national claims and I answered yes.

Q Specifically not litigation such as this, but this litigation, have you been made aware or are you aware of any interests specifically indicated by foreign nations in this litigation?

A No.

Q Are you aware that this litigation is a dispute between the United States and the State of Alaska concerning the right to exploit the resources of the sea bed of lower Cook Inlet?

[147] A I haven't read the charges or the briefs, whatever you refer them to these as. I was under the impression it concerned the matter of whether Cook Inlet was internal waters of the State of Alaska or the United States or if they were territorial waters or contiguous zone. One of the aspects of it would certainly be the exploitation of the sources of the sea bed, so it would be a matter of fishing, particularly in the contiguous zone area or the high seas area which has been the Inlet according to our definition.

Q Are you aware that the genesis of this lawsuit was based upon a dispute between the state and federal government as to who was entitled to issue leases to the land submerged in lower Cook Inlet? Just answer me that. Were you aware that this was the genesis of this lawsuit?

A I was aware it was one of the principal things. I am not aware of the fact it was the genesis.

Q You have testified to some knowledge relative to attitudes of foreign nations in these areas. Is there anything that a foreign nation would be interested in relative to the rights of the United States or the State of Alaska to exploit resources such as oil? Does it concern a foreign nation whether the state has this right or whether the federal government has this right?

[148] A No. It would not in the depth of waters which are here indicated in the Cook Inlet.

Q Now, you have testified concerning what I suppose you had referred to as policy of the Department of State concerning the position of the United States on territorial waters. Do you, yourself, Dr. Hodgson, make this policy?

A No, I do not. I have been the Research Division and the Research Division is not in what is essentially the policy area of the Department.

Q So that any statement that you make concerning these matters is not an origin or fountainhead of policy, is that correct?

A Well, if I understand your question, if I quote someone who has made a policy statement, it would still

reflect the policy but I as the origin, as a point of origin, I am not essentially a policy-making officer.

Q So, any policy to which you have testified concerning this litigation does not originate with you as the policy-maker?

A Well, that which originated within my capacity of the chief drafting officer, so to speak, would be reflected in policy only after it was approved by the Committee and later by the Law of the Sea Task Force. I may have originated it but I would not be essentially attributed as the policy maker.

[149] Q For instance, you would not be the one if a claim were to be made to an area as historic waters, you would not be the one to make the claim, is that correct?

A I would not be the one.

Q Would you suspect that a claim to historic waters in any area would depend upon a consideration of facts relating to the history of that area? Would it be normal for a claim to be based upon history?

A For a claim to historic waters?

Q Yes.

A I would say activities of the state through history, yes.

Q In the case of the State Department, would all of the history upon which a claim would be based necessarily originate within the State Department or could other government agencies have a part in the history-making process?

A Other agencies and other departments could have a part.

Q Would it be the natural and normal thing that they would have a part if we are talking about history?

A In the activities these would be conducted by the individuals outside of the Department of State, by agencies outside the Department of State and by the Department of State [150] itself.

Q Would it also be normal that in determining whether a claim would lie to a historic water, to a water as historic, that a natural source for this history would

be the agency of the government responsible for fishing activity?

A This would be one source, yes.

Q Now, in all of the policy which you have discussed and testified to here today, have you considered or are you aware that any other person in the Department of State has considered the history of Cook Inlet, let's say, since 1867; when the area was ceded by Russia to the United States?

A Have we considered the general history or historic activity? I am not quite sure I—

Q Are you aware that the historic activities of the United States in this area, if indeed there have been any activities, I am not asking you to tell me whether there have been, but are you aware that the historic activities, if any, by the United States Government or any of these agencies we just discussed were considered by the Department of State in reaching its policy that you have testified to?

A You are asking me to testify on what evidence was, shall I say accepted, versus what was presented by the people who make the policy decision. I can't answer the question. I [151] know that information was furnished and on fishing activities of the United States, Alaskan and other United States' fishing groups. I know that information was considered of foreign fishing. I do not know the total mass of information which was submitted nor that which was the determining factor in the decision, if, indeed, a positive decision was made.

Q All I am asking you, you have testified to policy and what the policy of the United States Government is with respect to territorial waters, 24-mile closures, straight baselines. Are you, yourself, aware of any input, if we may use that word, to this policy of the State Department based on the historic activities of the United States agencies in Cook Inlet?

A During our Committee examination of the Alaskan question in particular in the recent months since the government has written there has been a considerable discussion of fishing activities in the Alexander Archipelago

or other areas of Alaska during the period when Alaska was a Territory.

Q Were you aware of any such discussions that took place, say, prior to 1970?

A No, I am not because at the time of the initial examination of the records which I spoke of that Dr. Pearcy and I made it was relatively a long time ago at which time I was assistant or a deputy to Dr. Pearcy and I was not involved in [152] the high level discussions that I currently am. Now, having worked with the evidence as I said I had, I presented my part of it to Dr. Pearcy who presented his part to Mr. Yingling and Mr. Yingling presumably then presented this package on to whoever made the decision or however the procedure was. I was not in the ultimate stages at that time.

Q Should it be the policy of the United States Government to deny the history that may have taken place in an area such as Cook Inlet relative to its qualification as historic waters? "To deny," I mean to completely cast aside, pay no attention to.

A I think all evidence should be evaluated and weighted and put into the eventual formula which determines policy.

Q So you would agree that history should not be denied, is that correct?

A I would say that historical factors are part of an equation.

Q Are you aware that all of the historical factors have been made part of the Cook Inlet equation as that equation now stands in the U.S. State Department?

A I have no way of knowing whether all factors are presented on any case.

Q So your testimony relative to policy has been at least [153] in ignorance in this one area as to what relative facts and history have been considered, is that correct?

A That's correct.

Q We had some very interesting, and I defer to your knowledge of the geographic technicalities as to what differentiates an inlet from a bay, from a river and

even from a ditch. I certainly am not in a position intellectually to dispute your conclusions. However, would you agree that to a layman some of these distinctions would not necessarily be as apparent as they are to you?

A I would suspect so. It is a very interesting development of a language to know of people's concepts of specific generics. I don't want to philosophize on it but I would suspect, yes, that some people would call a bay what I would not call a bay and some people might find it difficult to differentiate when a creek stops and a river starts.

Q Is it even possible to hypothesize that in a body of water which has a tidal range of 38 feet, which in winter ice flows move, actually flow, that to a layman such an occurrence might be characterized as a river?

A I would doubt it because of scale. By that I mean dimensions, and the tidal range is so great I think most laymen would think of it as an arm of the sea. Rather than as a phys- [154] ical feature of the land.

Q Let me toss in another fact; that some of the water is characteristically almost mud colored, does not share the color of sea water. All I am asking you, sir, is it not possible that a layman not as well educated as you could reach this conclusion? Not that all would, but is it not possible that some might?

A One cannot deny anything, I don't think.

Q So you do admit to the possibility, do you not?

A Well, obviously someone has if the State of Alaska says it is a river.

Q I am not asking you to—

A I don't mean to be smart, but I can't—

Q I am just simply trying to suggest geographic criteria which might lead an individual to reach this conclusion. Or physical criteria, if we may?

A I think almost everyone acknowledges that a river has certain characteristics of being a river, and part of this is a matter of its natural flow of water; that a stream of water which is generated from a pump is not a river, cannot be a river because it is not natural; that a river essentially is a means of transporting water from a higher elevation to a lower elevation; that virtually all rivers

have parallel banks; virtually [155] all rivers have a certain range of dimensions to which they are acceptable. Now, the term "river" may be applied to a stream which is fifty yards across or a hundred yards across or a mile across. Most people don't refer to a river as a body of water which has an average width of 20 or 30 or 40 miles.

Q But I am just suggesting, do not some of the characteristics of a river, could they not to a layman seem to be apparent in Cook Inlet?

A I find it difficult to conceive of it because I find it difficult to put away my own knowledge.

Q But attempting to do this just as a hypothesis and thinking in terms of perhaps even an uneducated seaman, is not this possible?

A I would think not a seaman. Certainly, an uneducated individual who didn't know very much about coastal areas and coastal features could conceivably consider it to be the mouth of a river.

Q You testified to the fact that the set of 155 charts had been sent to the State of Alaska, is that correct?

A Yes, that is correct.

Q And do you know to whom in the state the charts were sent?

A The original request which I serviced was from the [156] Governor's office and we addressed them to Governor Egan's office. The second request for charts which was received by another office other than mine was to someone in the Governor's office. I don't know to whom. We sent the second set of charts to the individual. The first set went to the Governor; the second one to somebody else. I don't know who.

* * * *

[157] Q With respect to Cook Inlet, I believe you testified there was no discussion of historicity there either, was there, in the 155 charts?

A There was no discussion, I don't believe, in the framework of the Committee because of my knowledge of the Department's attitude as reflected in Mr. Chayes' letter and other data or conversations which I had within the Department that would lead me to have considered historicity at the time [158] I was drawing it .

Q I gather from your testimony concerning the boundary agreement between Connecticut and New York as to Long Island Sound, which was subsequently approved by Congress, that some agency other than the Executive may determine the status of waters as a historic bay, is that correct?

A One of the pieces of evidence that was considered was the New York-Connecticut state boundary and it is the responsibility of the states to determine their boundaries with other states, speaking here of the states of the union, and for Congress to approve these directly or indirectly and for the Supreme Court to adjudicate it in the case of difference of opinion. In the New York-Connecticut boundary, the boundary was extended from the land through what I believe is called Fishing Sound to place Fishing Sound in the adjacent islands within the State of New York.

Q So what you are saying is some other branch of the government such as Congress may through its action obtain a result that waters which might otherwise not be inland waters are inland waters and I refer again to Long Island Sound and the approval by Congress of the Connecticut-New York boundary agreement?

MR. CHARNEY: To the extent that the Alaska objection to [159] opinions of Dr. Hodgson on legal conclusions is sustained, we would like to make this objection without waiving our original claims.

BY MR. CRANSTON:

Q In other words, you have referred to this now. Are you saying that branches of the government other than the Executive may through their action achieve this result?

A Yes.

Q So, as an official of the State Department you do recognize that the sole distinction as to the status of waters as historic bays does not rest exclusively with the Department of State or the Executive?

A Yes.

Q Incidentally, did New York or Connecticut obtain a greater area of inland waters by virtue of the treatment

of Long Island Sound as a historic bay or a historic bay-like body of water? Was the amount of inland waters to either state enlarged by virtue of this result? In other words, were waters made inland which by virtue of other application of the strict adherence to the 24-mile closure line and semicircle test or other subjective criteria, were the inland waters of the state increased?

A The answer to this is yes.

[160] Q Now, I think we can put this aside. I want to refer to the map which has the Canadian vessel sightings on it.

MR. CHARNEY: That was it.

MR. CRANSTON: Oh. All right.

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I would refer you to Plaintiff's Exhibit 5, and ask you if your construction of this exhibit was based solely upon the information you derived or solely upon the information contained in the deposition of Bernard Scud and Exhibit 3 to that deposition?

A The limits of the fishing areas with statistics 260, 270 and so on, were partially in the testimony and partially on another map which I believe I saw a number on it, that it was No. 70 or something like this of the Federal—yes, that is it.

Q So you placed the figures 260, 261, 271 and 272 on this exhibit based on information contained in U.S. Exhibit No. 79, is that correct?

A That is correct. And certainly the testimony which was in Mr. Scud's statement. That 272, for example, was Kachemak Bay and 271 was the northern part of Shelikof Strait which is not apparent from this map.

MR. CHARNEY: Can we identify "this map."

[161] THE WITNESS: I'm sorry. This map which is Exhibit, U.S. Exhibit No. 79.

MR. CHARNEY: May I also, in order to connect this up, say this was Scud's Deposition Exhibit No. 5.

BY MR. CRANSTON:

Q Now, relative to the existence or location of the vessels which you described in your testimony relative to Plaintiff's Exhibit 5, did you rely solely upon the statements contained in Mr. Scud's deposition U.S. Exhibit 80 and Exhibit 3 to that deposition?

A Yes.

Q Did you—

A Oh, I beg your pardon. And information which is printed on the chart which I think is inherent, perhaps inherent in the question. Some of them said it was between the moraine lines or located by the intersection of two moraine lines. This information is on the chart.

Q Relative to the existence or location of these vessels did you make any objective determinations of your own?

A There are subjective judgments on my own in the sense that where it would indicate it was between moraine lines and give two values and say in the middle of Cook Inlet I would make a subjective judgment as to where the middle of Cook Inlet [162] was.

Q Now, if there is any inaccuracy relative to the location of these vessels, and I am not suggesting to you that there is, but if there should be, take this as a hypothetical, if there should be any inaccuracy as to the location of these vessels, or even their existence in Cook Inlet as set forth on any of the exhibits we have discussed, U.S. Exhibit No. 80, Exhibit 3 to the deposition of Bernard Scud, the deposition of Bernard Scud himself, would those inaccuracies be reflected in Exhibit 5 to your deposition, Plaintiff's Exhibit 5 to your deposition?

A They would.

Q This exhibit, then, is not intended by you, I take it, to be any sort of verification of the truth or accuracy of the documents upon which you relied in its preparation, is that correct?

A It is a plotting of the information which is in these documents.

Q But it is not an independent verification of the accuracy of that data?

A Oh, no.

• • • •

[163] Q I am unable to locate in the log, and I would ask your pardon for not being able to do so, where on the log we find the azimuth 267? What particular reference in the log—

A The azimuth here. It should be in the log in two—separate places. On the righthand page here it is, "Alter course to 267 degrees at 0930 hours" here—

Q By "here," you are pointing to—

A I am pointing to the lefthand page which is dated the 6th of April, 1962 in the box marked by the ninth hour under course, there is a change of course from 297 degrees to 267 degrees.

Q I see. That figure to me looked like a 207 in the block after nine in the column entitled "Course." It is a six?

A It is a six, yes.

Q Let me just ask this, how do you determine it is a six when to me it looks like a zero?

A Well, it looked like a six to me and it was verified as 267 on the other page, on the righthand page of the log where it is "altered course to 267," the seven is even drawn with a slash through it which is common for non-American writers [164] of English.

Q Again, you will excuse the obstinancy, but I would like to hand you my copy of this exhibit and ask you if in the column entitled "Course" after the hour nine the figure is more likely to be a six than a zero? Now, maybe there is some other copy of the log that is more legible than that?

A Well, I read it to be 267 because the top of the—what you are calling zero here is going up to the top of the page and not terminating as it does in the 201 and I interpreted that to be a six in which the top, either it was not printed because of the lightness of the ink originally or because of the failure in the Xeroxing, so I interpreted this to be a change of course to 267, particularly when it was verified.

Q Let me ask you with respect to the page I have just shown you, the 6th day of April, 1962 from the log, did you see any entry which was on any other copy

which was more clearly a six than what appears on my copy of the exhibit?

A I am afraid I don't understand your question.

Q Well, did you see any other copy of this log upon which the figure in that column after the hour nine is more clearly a six than appears on my exhibit?

A I will look at the copy which I used. On my copy it looks like essentially the same as it is on this copy. By that, [165] I mean the one which was marked with the deposition that has the beginning of a tail or the beginning of an upward stroke, which the 201 in the eleventh hour column does not have.

Q At any rate, you based your conclusion as to the course and relying upon a document which is similar and no more clear than the exhibit which is furnished the State, is that correct?

A Similar to furnished to the State.

Q Is it any clearer, the one that you based your determination on than what the State has? Can you answer the question?

A My answer to the question is that my copy is virtually identical to yours.

Q What copy has been furnished that will be attached to the deposition?

A This is the one with the writing on it.

Q And you have examined the copy that will be furnished as an exhibit to the deposition. You say that is essentially similar?

A That is it, yes (referring to Plaintiff's Hodgson Deposition Exhibit 8, for identification).

Q Let me ask one other question at this time. Do you know whether the vessel whose course you have plotted here was fishing at the time?

[166] A The only information I have is what was in the log.

Q Does the log indicate?

A The log says "Continued searching for—(I have difficulty reading it upside down). "Continued searching for fish group" in the hour blocked from four to eight.

Q Now, do you know whether or not this vessel whose course you plotted was in fishing parlance known as a

mother ship or as an actual catcher boat? Would not this log indicate that that is a mother ship looking for her catcher boats or fish groups?

A The indication is that it is a mother ship. The "Continued searching fish group" indicated to me that it was either in itself seeking for its own fishing or for the direction of subsidiary craft.

Q Do you consider yourself to be an expert in whether or not from a ship's log you can tell whether a Japanese vessel is fishing or whether it is looking for a catcher boat?

A From the log as it is here you can't tell.

Q Do you have any expertise in this area?

A No, sir.

Q You earlier referred to this vessel, I believe, in your testimony as a fishing vessel. Now, you did not then intend to characterize it either as a vessel which was then [167] fishing or as a catcher boat based with a Japanese mother ship?

A I did not intend to characterize it, no.

Q Now, as to this course which you have plotted, did you put any of your own subjective judgment into the plot or did you rely solely upon the information that appears on the ship's log?

A There is an indication of subjective judgment in putting the two courses in as to which of the two Capes was the one referred to in the log. To minimize my subjective judgment I put both courses in.

Q Do you know ultimately what happened, what the result of this vessel's activities was?

A Well, I believe it was seized or some of its craft was seized by the State of Alaska, was it not?

Q I am just asking you.

A I believe it was. I believe it was seized in the Shelikof Strait.

Q Are you aware whether as a result of this seizure the United States ever made a formal apology to whatever government was then in power in Japan?

A I am not aware of the results.

Q Do you know anything concerning the activities of the State Department as result of the seizure of Japan-

ese vessels [168] in Shelikof Strait by the State of Alaska?

A My remembrance of the incident, it is many years ago, is that the ship was released, as I recall, at the request of the Department of State officials. I don't know what procedures were followed. I don't remember. It has been too long ago.

• • • •

Q All right, we may remove these exhibits and go on to [169] some more. I will refer to the document which has been stipulated to as being an exhibit to other depositions in this case, the depositions being those of Mr. Terry, Mr. Kirkness, Mr. Gharrett and Mr. Nabb. Have you ever read or are you familiar with a regulation promulgated by the Department of Interior in 1957 which defined the waters of Alaska, the regulation appearing at 50 CFC Section 210.10?

A Not specifically.

Q Do you know anything concerning the definition given the waters of Alaska by that regulation?

A No.

Q Are you prepared to say that the exhibit to which I just referred as being an exhibit to other depositions and with this black line drawn on it is not an accurate representation of the waters of Alaska as defined in that regulation?

A I am not in any position to say it because I don't know the language of the regulation.

Q So nothing that you testified to concerning this exhibit in any way is an attempt or a judgment by you that this was an incorrect graphic representation of the provisions of that regulation?

A I don't know the regulations. I am not in a position to say.

[170] Q Well, you couldn't have then intended your testimony which you have just given concerning this exhibit to be an attempt to state that this line is not a graphic representation of that regulation because you don't know the regulation. Your testimony didn't even affect that regulation or relate to it?

A That's correct.

Q Was your testimony concerning the appropriateness of this line, which is the black line with various dotted lines, based upon any knowledge you might have concerning activities of the United States in the enforcement of fishery regulations in the waters involved?

A May I ask you to repeat the question.

(The question read.)

THE WITNESS: No. My comments were not intended to refer to fisheries regulations or fisheries conservation practices or anything of that nature. I spoke of my remarks in the sense of their appropriateness or non-appropriateness as straight baseline systems for the measurements of the territorial seas.

BY MR. CRANSTON:

Q Your testimony then was solely a sterile application of your concept of what would be appropriate straight baselines and did not consider or did not intend to consider any other criteria which may have involved this line such as fishery [171] regulations of the United States Government?

A My comments were referred to in the sense of the straight baseline system.

Q And that is all they were?

A The existence or non-existence of such a system at approximately this time, solely.

Q Solely straight baseline, nothing else? You shook your head in the affirmative.

A I'm sorry. Yes, that is correct.

* * * *

[174] Q Do you know whether or not with regard to this exhibit which we have referred to as being Exhibit 2 to an exhibit to the Terry, Kirkness, Gharrett and Nabb depositions, do you know whether or not an individual then with the U.S. State Department named William Harrington had anything to do with this exhibit?

A I don't know who had anything to do with this exhibit other than all my recollection, other than the brief recollection I have of the one document that someone

of the Office of Fish and Wildlife, Special Assistant, submitted it to Ottawa. It may have been Mr. Harrington. He was in the office at that [175] time.

Q So you are not testifying there is no State Department involvement with this exhibit, is that correct?

A My understanding it was transferred to the Canadian Government by the American Embassy in Ottawa.

Q Did you ever see the letter of transmittal from the Embassy in Ottawa to the Canadian Government? You testified you had seen some letters of transmittal?

A I have seen the aerogram transmitting it to Ottawa.

Q From State?

A From State.

Q And beyond that you have seen nothing?

A I have seen nothing else.

* * * *

[3] WALTER KIRKNESS,

a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?

A Walter Kirkness.

Q What is your address?

A 6212 Beechway Drive, Falls Church, Virginia.

Q What is your business address?

A It is National Marine Fishery Service, NOAA, Department of Commerce, Interior Building, Washington, D. C.

Q What is your present age?

A Fifty-one.

Q What is your present occupation?

A I am Acting Associate Director for Resource Management, National Marine Fishery Service.

Q Have you ever had any occupations which dealt with Alaska fisheries or Alaska fish and wildlife?

A Yes.

Q And starting from the earliest occupation you had [4] in this area, would you describe it and continue on through the last?

A Okay. In 1950 I was employed by Territory of Alaska Department of Fisheries as a fisheries biologist. I served with the Territory Department of Fisheries until Alaska became a state in various capacities, and I continued to serve with the State of Alaska through July of 1967. Since 1967 I have been associated with the Bureau of Commercial Fisheries and the National Marine Fishery Service in various programs which dealt with Alaska.

Q When you were with the Territorial Board of Fisheries, you say?

A Department of Fisheries.

Q Where were you stationed?

A Juneau.

Q And when Alaska became a state what were your duties and where were you stationed?

A When Alaska became a state in 1959 I was made Director of the Division of Commercial Fisheries.

Q For the State?

A For the State of Alaska.

Q And were you stationed in Juneau?

A In Juneau.

[5] Q And then would you give each position you held for the State Department of Fisheries subsequent to that time?

A In September, 1961, I was appointed Commissioner for the Department of Fish and Game and I held this position until July of 1967.

Q You were then employed by the Alaska Department of Fish and Game when C. L. Anderson was Commissioner?

A Yes.

Q And, again, what was your position under him?

A I had various positions. He was head of the Department from the time I joined them in 1950. But in 1959

through 1961, September of 1961, I was the Director of the Division of Commercial Fisheries.

Q And you moved immediately from your position as Director of the Division of the Bureau of Commercial Fisheries to the Commissioner's post?

A That is right.

MR. CRANSTON: I would like to have a series of letters marked as Defendant's Exhibit 1 to this deposition. The first letter is dated January 8th, 1960, from C. L. Anderson, Commissioner, Alaska Department of Fish and Game, to John Gharrett, Regional Director. I would also like to have included in this series a letter from John I. Hodges, Acting [6] Chief, Division of Resource Management, to Regional Director, Bureau of Commercial Fisheries; and a second letter from John Gharett to Mr. C. L. Anderson.

(Letters marked Defendant's Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q I would like to ask you to look over this correspondence and familiarize yourself with it.

A All right.

Q I would ask if when you served with the Alaska Department of Fish and Game you were familiar with the problems discussed in this correspondence?

A Yes.

Q And were you made aware of any charts which were furnished the Alaska Department of Fish and Game pursuant to this correspondence?

A Yes, I was.

MR. CRANSTON: I would like to have Coast and Geodetic Survey Chart 8502 with the notation in the lower left-hand corner, 44-8/4, 9/27; 49-1/9, 7/28; 47-6/30, 9/29; 49-6/20; 50-9/4 marked as Defendant's Exhibit 2 for identification.

(Chart marked Defendant's Deposition Exhibit No. 2 for identification.)

[7] BY MR. CRANSTON:

Q Mr. Kirkness, I will place before you what has been identified as Defendant's Exhibit 2 which is a chart of Alaska, South Coast, Cape St. Elias to Shumagin Island with a line drawn on it, and I ask you if this would represent a portion of the chart submitted to the Alaska Department of Fish and Game as disclosed by the correspondence in Deposition Exhibit 1?

A I don't recall whether the specific line was drawn on Shelikof Strait at that time on the charts we received.

Q With the exception of the Shelikof Strait area would the—

A Well, I would say, that, you know, that was ten years ago, or eleven years ago. I don't recall the exact points that they ran to, but it looks much the same as I recall it. But I don't recall the exact line, itself, or from what point to what point it ran.

Q All right. But to the best of your memory, do you recall any specific differences where you would question whether this chart is different from the one which you were furnished?

A I couldn't recall any differences.

Q All right. Would you discuss the problem which was [8] faced by the Alaska Department of Fish and Game which necessitated the request for a chart?

A Well, there were several problems. One of them, of course, was that the State was involved in the dispute with the Canadians over the so-called surf line. There was a joint committee appointed to meet with the Canadians which the State is a co-equal partner with the Federal Government. There is one Federal employee and one State employee. So, we have to get our case ready for th Canadians. The other problem was, what was the official designation of territorial water for the State of Alaska for enforcement purposes.

Q Did the State use the charts furnished by the Federal Government with respect to each of those two areas?

A Yes, it did.

Q When you were involved with the State Department of Fish and Game, did the State enforce fishery laws and regulations of the State in Cook Inlet?

A Yes.

Q And over what portions of Cook Inlet did the State enforce its fishery laws and regulations?

A Over all portions that commercial fishing was allowed.

Q Did the area of enforcement depend on the distance from the shore line of Cook Inlet in which the fishing activity [9] was carried on?

A No. As I recall the Cook Inlet regulatory area, I believe, went from somewhere near Elizabeth Island or Chugach Island to Cape Douglas. That is my recollection of the regulatory area, and fishing was allowed in various bays throughout this area.

Q Did the State enforce fishery laws and regulations against Citizens of Oregon and Washington and other States throughout the entire regulatory area?

A Yes, they did.

Q And was the manner in which the State enforced its fishery laws and regulations made known to agencies of the United States Government?

A What do you mean by that?

Q Well, was the United States Government, the Bureau of Commercial Fisheries, or any other agency aware of the method and manner through which the State fishery laws and regulations were enforced?

A Well, first, we didn't make any point of keeping them advised. I mean, that wasn't our job. But the Federal officials were fully aware of how it was being enforced because it was the same way they did it.

Q Did the State Department of Fish and Game ever [10] receive any objection or criticism from the Federal Government regarding the manner in which the State was enforcing its laws and regulations?

A No.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

• • • •

[12] Q Had you seen these maps prior to having received them in the State, in the '60's, 1960's?

A Well, I think that I recollect seeing them before they were actually sent, but the time interval, I am not certain of.

Q Was the location of these lines notorious throughout the Territory of Alaska prior to their transmittal to the State?

A Notorious?

Q Notorious in that they were well known?

A When you say "well known," do you mean well known to the general public?

Q Yes.

A I would say they were not well known to the general public.

Q When you received these maps, did you protest the placement of these lines to the Federal Government, the placement of the specific lines through any means?

A We protested but not on what you would call a high plane official level. We protested locally to the Bureau of Commercial Fisheries that the lines in many places were much too conservative.

[13] Q Did you change these lines prior to use in Alaska?

A Prior to the use by the State?

Q Yes.

A There are possibly some changes and I don't recall whether they were actually made or not, or whether these were—we did draw certain lines and which liberalized to some degree where we thought the base line should be. But I can't recall whether any charts were presented with these lines on them or not.

Q But for your purposes you liberalized these lines to some degree?

A Well, when you say for our purposes, how do you mean? What do you mean "for our purposes"?

Q For the uses that you employed these maps for.

A I don't think I could recall whether or not we did.

MR. BRADLEY: No further questions.

FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Just one. Mr. Kirkness, we were discussing whether or not these lines were well known or not, and you testified they were not well known to members of the general public. Were they well known to members of agencies whose responsibilities were the management and enforcment of fishery laws?

[14] A I think that would have to be an assumption on my part because up to the time we had received control in January of 1960, I do not know what circulation they received within the Coast Guard or the Bureau of Commercial Fisheries.

Q Were they well known to the members of the Alaska Territorial Agencies?

A I would say that they were not well known since the Alaska Territorial Agencies had no regulatory functions.

Q And members of the fish community, those who were engaged in the trade of commercial fishing, do you know if they were aware of—

A To the best of my knowledge, the Bureau of Commercial Fisheries never issued printed copies to the public.

* * * *

[3] WALTER KIRKNESS,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Give your name, please?

A Walter Kirkness.

Q What is your address?

A My home address?
Q Yes.
A 6212 Beachway Drive, Falls Church, Virginia.
Q And your business address?
A NOAA. National Marine Fishery Service and National Oceanic and Atmospheric Agency.
MR. CHARNEY: Administration.
THE WITNESS: What did I say? Agency? Okay. Administration. Of the Department of Commerce, Washington, D. C.

BY MR. CRANSTON:

Q Your present age is what?
A 51.
Q And your present occupation?
[4] A Do you want a title?
Q Yes.
A Acting Associate Director for Resource Management for National Marine Fishery Service.
Q Now, you are the same individual named Walter Kirkness, are you not, who testified earlier in this case at a deposition on September 28th, 1971?
A Yes.
Q All right, I won't repeat to any great extent your past employment history but would you state briefly what positions you have formerly held with the Alaska Department of Fish and Game?
A I was Commissioner from September of 1961 to July of 1967 and approximately from 1958 to the time I was appointed Commissioner I was Director of the Division of Commercial Fisheries. Previous to that I was a senior fisheries biologist in research in the Alaska Department of Fish and Game.
MR. CRANSTON: Would you mark these as Deposition Exhibit 1, please. This is a letter from C. L. Anderson, Commissioner of Alaska, Department of Fish and Game, to Mr. John Gharrett, Regional Director, Bureau of Commercial Fisheries, dated January 8th, 1960.

(Letter marked Defendant's Deposition Exhibit No. 1 for identification.)

[5] BY MR. CRANSTON:

Q Mr. Kirkness, I am handing you what has been marked as Defendant's Exhibit 1 and I believe you have seen this letter before, have you not?
A Yes.
Q I refer to the dictation symbol—
MR. CHARNEY: This is Deposition Exhibit 1?
MR. CRANSTON: Yes.

BY MR. CRANSTON:

Q I refer to the dictation symbol in the lower left-hand corner. What did the initials W.K." indicate?
A They are my initials and the "kp"—well, okay.
Q All right, "kp" is the secretary, then, is that correct?
A Yes.
Q Now, did you prepare this letter?
A I believe I did.
Q Is that what your initials down in the lower left-hand corner indicate?
A Yes. That is the initials of my secretary at that time.
Q You prepared it and Commissioner Anderson signed it?
A Correct.
[6] Q Now, does the fact you prepared it indicate that you were primarily responsible for obtaining the materials which are described in the letter?
MR. BRADLEY: Leading. Object, please.

BY MR. CRANSTON:

Q You may go ahead and answer, please.
A What am I supposed to do?
MR. BRADLEY: You can answer.
THE WITNESS: Okay. Yes, the Division that I was in charge of at that time, the Division of Commercial Fisheries, assigned me the responsibility of obtaining these charts.

BY MR. CRANSTON:

Q Now, do you recall whether the Federal Government or Mr. Gharrett made a written response to you

referring to overlays to charts delineating a baseline along the coast of Alaska?

A Well, I have seen the correspondence at the last deposition in which he replied.

MR. CRANSTON: I would have this letter, then, from Mr. John Gharrett, Regional Director, to Mr. C. L. Anderson, Commissioner of Alaska Department of Fish and Game, dated January 29th, 1960, marked as Defendant's Exhibit 2, please.

(Letter marked Defendant Kirkness Deposition Exhibit No. 2 for identification.)

[7] BY MR. KIRKNESS:

Q All right, I am handing you Defendant's Exhibit 2 and I ask you, then, if this is the written reply which Mr. Gharrett made to your letter of January 8th, 1960?

A To the best of my memory, it is.

Q In the first paragraph, then, I would refer you to the language: "In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating a baseline along the Alaska coast . . ." Do you recall that you did see such a letter from Mr. Gharrett making that reference which I just quoted?

A Would you repeat that, please?

Q Do you recall that you did see a letter from Mr. Gharrett making the reference to "overlays of charts delineating the baseline along the coast of Alaska" as stated in paragraph one of that letter marked as Defendant's Exhibit 2?

A Well, strictly from memory, I don't think I would remember specifically the wording in the letter from Mr. Gharrett at that time if my memory had not been refreshed. I am assuming that this is the letter we received.

Q Now, you have no reason to believe this is not the letter, do you?

A I have no reason to believe it is not, no.

[8] Q Going back to Deposition Exhibit 1, I would refer you to the first sentence wherein you state, "It has been brought to my attention that you have prepared

charts delineating the extent of the marginal seas for control of the United States nationals." When you referred to the term in that letter, "marginal seas," did you mean the three-mile belt of territorial waters? Is that what you were referring to by the use of that term?

A I believe that is correct. I am not positive of that language, but I believe that is what the reference meant.

Q All right, now, going back to Mr. Gharrett's response to you in Exhibit 2, is it your understanding that his reference in his first paragraph to the baseline along the Alaska coast was the baseline from which to measure the three-mile belt—

MR. BRADLEY: Object. It is a leading question.

BY MR. CRANSTON:

Q I will continue with my question. Was it your understanding that his reference to the baseline along the Alaska coast from which to measure the three-mile limit was in response to what you referred to as the marginal seas?

MR. BRADLEY: Objection.

THE WITNESS: Our understanding of the term "baseline" and of the lines drawn on the overlays was that they were the [9] baselines from which to determine the territorial waters.

Q And then that is to say it was your understanding that it was the baseline from which you would measure the three-mile limit as used in the Alaska fishery regulations?

MR. CHARNEY: Objection.

THE WITNESS: That was our understanding, yes.

BY MR. CRANSTON:

Q Again referring to Exhibit No. 2, Mr. Gharrett in his first paragraph referred to sending under separate cover overlays of charts. Do you recall whether the Alaska Department of Fish and Game did receive overlays of charts?

A Yes, sir, definitely, we did receive a set of charts. I don't recall exactly how many but as I recall they in-

cluded the coastline from Dixon Entrance up through northwest Alaska.

Q Then based on what you have told me at this point, is it fair to say that based on this correspondence and your recollection of it that the Alaska Department of Fish and Game was sent a set of overlays for charts which set out a baseline from which to measure the three-mile limit for fishery regulations?

MR. BRADLEY: Objection.

THE WITNESS: Repeat the question, please.

BY MR. CRANSTON:

[10] Q Then, is it fair to say on the basis of your recollection at this time and on the basis of the exhibits which you have in front of you that the Alaska Department of Fish and Game was sent by Mr. Gharrett a set of overlays for charts which set out a baseline from which to measure the three-mile limit for fishery regulations?

A We definitely received a set of overlay charts which were hand-delivered by someone in the Bureau of Commercial Fisheries. I don't remember by who. It was brought over to our building, as was set out in this correspondence.

Q All right. Based on your understanding of the correspondence, was it your impression that the overlays were intended to describe a baseline from which to measure the three-mile limit for fishery regulations?

MR. BRADLEY: Objection. Leading question.

THE WITNESS: As I say, this was our understanding that these were baselines designed to determine territorial waters.

BY MR. CRANSTON:

Q For fishery regulations?

A For fishery regulations, correct.

MR. CRANSTON: Would you mark as Defendant's Exhibit 3 this large piece of paper with a line on it which has the [11] legend in the lower right-hand corner, "Proposed Baseline from which to Measure Three Mile Limit for Fishery Regulations; Overlay for U. S. Coast

and Geodetic Survey Chart 8502; Cape ST. Elias to Shumagin Islands"; and, further, in the extreme lower right-hand corner there is a numerical indication "4/57," and slightly to the left of that in blue ink, is written lettering "SS, 11/18/71."

I will hand it to counsel for the Federal Government for examination.

(Paper marked Defendant Kirkness' Deposition Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q Mr. Kirkness, I am going to hand you what has been marked for identification Defendant's Exhibit 3 which is entitled "Proposed Baseline from which to Measure Three Mile Limit for Fishery Regulations; overlay for U. S. Coast and Geodetic Survey Chart 8502; Cape ST. Elias to Shumagin Islands." I want to ask you one first preliminary question. Referring to the lower right-hand corner, would the initials in writing "SDS" have any significance to you?

A That is Stan Swanson's initials.

Q Who is Stan Swanson?

A He has worked for the Department of Fish and Game since about 1953, I think, in various capacities.

[12] Q And you would recognize his initials, is that correct?

A I recognize his initials.

Q Since you have not participated at all stages in the proceedings of this case, I want you to assume two things. First, I want you to assume that this exhibit was located by Stanley Swanson in the files of the Alaska Department of Fish and Game on November 18, 1971. I also want you to assume that a man named H. C. Scutter in an earlier deposition has testified that the lettering "4/57" in the lower right-hand corner of the exhibit refers to the month and year when he drew the line and placed the writing on a similar exhibit. Keeping in mind these assumptions which, for purposes of my question you may accept as being true, and keeping in mind your earlier testimony concerning the letter, you wrote to Mr.

Gharrett and his response to you, I will ask you now, do you have any reason to believe that Defendant's Exhibit 3 is not the overlay which was received by the Alaska Department of Fish and Game as a result of and through the correspondence referred to in Defendant's Exhibits 1 and 2?

A I have no reason not to believe it is one of the charts which was transmitted by the Bureau of Commercial Fisheries.

[13] Q All right. Do you recall having seen the overlays which were transmitted to the Alaska Department of Fish and Game by Mr. Gharrett?

A Yes, I have definitely seen them.

Q Now, referring to Deposition Exhibit 3, can you tell me in any way in which the lettering or the description of what the chart represents is different from that which you recall seeing in the Alaska Department of Fish and Game? By "the description," I refer to the lettering in the lower right-hand corner beginning with the words "proposed baseline."

A Repeat that again, now. Are you referring to this line or the wording?

Q I am referring to the wording down in the lower right-hand corner. Can you tell me that is different in any way from the wording which you recall having seen on the overlays sent by Mr. Gharrett to the Alaska Department of Fish and Game?

A The only way I can answer that is it has been so long ago that I don't recall the wording; that I have no reason to believe it is different than the wording of the charts that were transmitted to us.

Q Do you recall there was wording on the charts which were transmitted to you—on the overlays which were transmitted [14] to you?

A There, again, I would have to rely on memory and to the best of my memory there was wording on the charts.

Q Then is it fair to say that Exhibit 3 which is before you is most probably what you saw in connection with the correspondence described in Exhibits 1 and 2 to this deposition?

MR. BRADLEY: Objection. Leading question.

THE WITNESS: Would you repeat that question, please?

BY MR. CRANSTON:

Q Is it fair to say that Exhibit 3 is probably what you saw in connection with the correspondence which we have previously discussed as Exhibits 1 and 2 to this deposition?

A I would say yes, it probably is.

Q Were you ever aware that more than one set of charts has been sent to the Alaska Department of Fish and Game by the United States Government in response to this correspondence?

MR. BRADLEY: Objection.

THE WITNESS: Would you repeat that question?

BY MR. CRANSTON:

Q Was more than one complete set of overlays sent to the Alaska Department of Fish and Game by Mr. Gharrett pursuant to this correspondence?

A I don't recall.

[15] Q But do you know of any more than one set of charts that was sent, one set of overlays to charts which were sent?

A To the best of my memory I believe we only received one set.

Q All right. If I were to ask you, did you ever see anything which would indicate a second set of charts having been sent, what would your answer be?

A Repeat that question, please.

Q Do you recall ever having seen anything which would indicate to you that a second set of overlays to charts was sent by Mr. Gharrett to the Alaska Department of Fish and Game?

A I don't recall any other sets being transmitted.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

Q Mr. Kirkness, would you read for the purposes of this deposition the last three paragraphs that have been submitted as Deposition Exhibit No. 2? Read it aloud into the record.

A "This information was submitted to Canada upon their request for information concerning Section 130.10 of our regulations, and was submitted with the explanation that this was [16] the manner in which the regulations applied to U. S. fishermen. We definitely avoided any reference to International or Territorial waters.

"I might add that we have not had occasion to make any arrests for violations of these regulations.

"If you have any further questions on this matter, I will be pleased to discuss them with you."

* * * *

[5] HOLGER S. LARSEN, a witness named in the Notice, being first duly sworn in the above cause, testified on his oath as follows:

EXAMINATION

BY MR. CRANSTON:

* * * *

[24] Q Now, taking that area from Cape Douglas to Gore Point, over what areas did you—over what of the water area north of that line did you look for violations of Federal laws and regulations?

A Of what area?

[25] Q Yes. What was the water area over which you considered you should have looked for violations of Federal laws and regulations?

A Over the entire district.

Q I see.

By the "entire district" you mean the entire water area of Cook Inlet?

A The entire water area of Cook Inlet, yes.

Q I see.

Would you have looked for violations of Federal law and regulations in the water area, say, even up the middle of Cook Inlet, north of that line?

A You are talking about this area here now?

Q Clear down an area between Cape Douglas and Gore Point.

A Well, I am not so sure I understand the question correctly.

Could you clarify it a little more when you speak of an area in here? What have you reference to when you talk about law enforcement?

Q Well, I take it that it was your duty to ascertain whether, among other things, of course, the fisheries' laws and regulations of the United States were being complied with; is that correct?

A That's right.

Q Now, over what water area north of the line from Cape Douglas to Gore Point would you require persons to comply with the fisheries' laws and regulations of the [26] United States, or within what water area? The entire area north of that line?

MR. CHARNEY: Objection, a leading question.

Q [By Mr. Cranston] All right, you just told me yourself over what water area.

A Well, I don't—I am not sure I understand just what your question is.

Let me put it this way: Can I put it in my own language, and I will say this—that within the Cook Inlet District, assuming that we had a regulation stating that a a gill net boat would have 200 fathoms of net. And we found a boat out here, an American boat out here.

Q What are you pointing to now?

A Anywhere within the Cook Inlet District.

If we had found a boat with 300 fathoms of net, we would have arrested him.

Q Now, let's specifically get at what particular laws were relevant to your activities.

Generally, I suppose one of the fisheries with which you were concerned was the salmon fisheries; is that correct?

A That is right.

MR. CRANSTON: Off the record.

(Discussion held off the record.)

MR. CRANSTON: Back on the record.

THE WITNESS: I can repeat it again.

I said that in flying over the Cook Inlet area, it could be a boat—there were specific fisheries' [27] regulations pertaining to each district, and I used this as an illustration, that if any of our fisheries' laws or regulations provided for 200 fathoms of net to be used within the Cook Inlet District, and I had found an American boat out here with 300 fathoms of net, I would have arrested him.

Q All right.

A Anywheres in the Inlet, within that Cook Inlet, Fisheries' District.

* * * *

[33] Q Did you make any arrests in an area south of Kalgin Island that stand out in your memory other than those which you have just described?

[34] A No, I don't.

Q Those are the ones that—

A That I was personally involved with most of the time. The fishery agents—Branson, Cross, Reynoldson—took care of these areas' incidents.

It was very seldom I got personally involved with something like this.

Q Did any of those other fishery agents make any arrests in the area south of Kalgin Island?

A I'm sure they did.

I can't tell you so many, but I'm sure they did.

Q Nothing sticks out in your mind, then; is that correct?

A That is right.

Q Now, so far as you can remember, within the period 1945 through 1958, when you were in the Cook Inlet area, were there any foreign fishing activities carried out within the area designated on Deposition Exhibit 1 as Cook Inlet?

A Well, from time to time the Canadian halibut fishing boats would be found in that area.

Q All right.

You are talking about the area generally north of the line from Cape Douglas to Gore Point?

A Yes.

Q All right.

It was an incident involving a Canadian halibut boat —let me rephrase that question.

[35] Does any particular incident involving a Canadian halibut boat in Cook Inlet come to you or—

A No.

Q —or stand out above any other?

A No.

Q Did you ever personally observe any Canadian halibut boat in Cook Inlet?

A I have seen them from time to time, but paid no attention to them, because we considered that international waters.

In other words, I was not involved in any Canadian fishing boat being inside or—what we considered the 3-mile limit.

If he had been inside of the 3-mile limit, some action would have been taken, and I would have remembered them, but any halibut fishing boat out here, they just come and I would pay no attention to them.

* * * *

[2] COURT MARCHANT, being first sworn upon oath, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Marchant, will you state your name, please?

A Courtland Marchant.

Q And what is your address?

A 3100 Brookside Drive, Anchorage, Alaska.

Q And what is your age?

A Forty-seven.

Q And what is your occupation?

A I am the Owner Relations Manager for Alaska Sales & Service, which is a dealership for General Motors.

Q And how long have you been employed in this capacity?

A A little over nineteen years.

Q Now, is there any time in your employment career when you have engaged as a commercial fisherman?

A Yes. In the year 1951.

Q All right. And were you employed by someone then?

A I was employed by San Juan Fishing Company.

Q I see. And how long did you pursue this occupation as a commercial fisherman?

A Approximately three months in the summer of '51.

Q All right. And were you assigned to a particular vessel?

[3] A I was assigned to the S.J. Nine which is one of the company's boats.

Q All right. And what type boat was that?

A That was about a thirty-two—thirty-four foot fishing boat that we seined and gillnetted from.

Q What type of fish were you attempting to catch?

A Salmon, red salmon, cohoe, the general salmon that run in the area of Copper Center, Cook Inlet and Kodiak.

Q All right. And during this period of time where were the areas you fished?

A We originally started out in Copper Center which is out of Cordova. And when the season was over there, we returned to Kodiak which is the home base and there we turned over from gillnet to seining and seined the the areas about Kodiak. And when this season was over, we returned and went back to gillnetting and then hit the Inlet area. That was the last phase.

Q By the Inlet, what do you refer to?

A Oh, anything around in Kenai, Snug Harbor—

Q You're talking about Cook Inlet, is that right?

A That's right. Around the mouth.

Q Now, what time of year or what month then were you fishing in Cook Inlet?

A Well, to say the exact days, it's kind of hard to reminisce on that, but—

[4] Q Approximately?

A It had to be during the open season fishing, which we fished the full season. I have to go back twenty years on that. That is kind of hard to say.

Q Would it have been somewhere around July? The middle of July?

A It is in the July area.

Q All right. Now, while you were fishing in Cook Inlet did you ever have any type of encounter with the agents or employees of the Federal Government?

A Yes. There was one instance there where we were approached by a launch from the U.S.S. Crane and given a citation for fishing too close together with another vessel.

Q All right. What, incidentally, was the U.S.S. Crane? What type of vessel was it?

A It was a very large vessel. It was a U.S. vessel, very large in comparison to our boat, and from it they had launches going out and investigating all the boats and approaching them. In this case we just had a launch with a couple men that come up. It was too rough to board, so they handed us a citation—gave a citation to the skipper for fishing too close. But, this vessel was very large. That's all I can remember about it.

Q By U.S., you mean an agency of the United States?

A Yes.

[5] Q What agency?

A Well, evidently with Fish and Wildlife.

Q All right. Would you mark this, please, as Deposition Exhibit 1. I am going to hand you to be marked for identification as Deposition Exhibit 1 a U.S. Department of Commerce, Coast and Geodetic Survey chart No. 8502, 16th Edition, dated July 4th, 1970, corrected through Notice to Mariners 27/70. Mr. Marchant, I am going to hand you what's been marked as Deposition Exhibit 1 and ask you, first of all, this area depicted on Deposition Exhibit 1, if it includes areas in which you fished during the year 1951?

A This general area here is where we fished.

Q Now, when you're pointing to the map, just describe it. You're pointing to Cook Inlet south of Kalgin Island?

A Right. South of Kalgin Island.

Q All right. Now, one further question, would you indicate by placing a mark on the Inlet—a circle with this black pen the location, as best you can remember, of where the agent from the U.S.S. Crane handed you the citation?

A To the best of my knowledge it would be in this area right in the center.

Q All right. You marked with your circle—with this pen a black circle on Exhibit 1 between the letters "L" and "E" in the words Cook Inlet, and between the numbers 27 and [6] 37, is that correct?

A That is correct.

Q Did the man who handed you the citation identify himself in any way?

A As I recall he did. He handed the citation to the skipper of the boat and I—I can't recall exactly what he said, but I know he yelled and spoke to us. And he couldn't board, so he just handed it over.

Q All right. What was done then after you were handed the citation? What did you—were you directed to go anywhere or do anything?

A Right. We were requested to report to the Magistrate in Kenai, Alaska.

Q All right. And who directed you to do this?

A This was the man that handed us the citation.

Q All right. Now, by the Magistrate, what was he? A governmental official?

A Right.

Q Of what government?

A I'd say he was the United States Government.

Q All right. Now, you did then report to the Magistrate in Kenai?

A Yes. We had to go over there by boat, and at that same time there were a whole group of fishermen there. Numerous ones were cited and there was a whole group of us there.

[7] Q All right. How soon after you were handed the citation aboard your vessel did you report to the Magistrate?

A I can't say exactly. It was very shortly afterwards that we had to report.

Q Was it the same day or the next day, or can you recall?

A I would say it was the following day.

Q All right. And were you informed by the Magistrate at any time subsequent to the handing over of the citation what you were charged with?

A Well, we knew we were charged for fishing too close because of the circumstances. This was the citation that was given to us.

Q All right. And could you describe generally what the circumstances were? In other words, what had you done—engaged in to cause you to become fishing too close? Generally what was the specific incident that took place?

A Well, the problem that we encountered was that in gillnetting you lay out crosswise or along with the current and in this case we had laid out and we were a long distance from any boat and we had all more or less figured that we were in a safe area, not being close to another boat. But, unbeknownst to us, another boat laid out down below us and in this certain area of the Inlet we had a current going one way and one going inward and we were going outward, I would say. And the other one was coming in, or vice versa. [8] But, at any rate, over a period of time, the next thing we knew, we were coming in contact with another boat and the ends of our nets met and started curling up and coming into contact together, which in reality is a violation because you are supposed to be so many fathoms apart. It was uncontrollable. There was no way we could stop it.

Q I see. Then you'd describe the cause of the occurrence as something that was out of your control?

A I would say so. Yes.

Q All right. Now, when you reported to the Magistrate in Kenai what proceedings took place and generally what was the result of those proceedings?

A Well, there were three of us on the boat and we all three had to report in. And we arrived at the

court and, of course, there was a lot of other fishermen there also because there was a great amount of fishermen that had been apprehended, you might say. And we went in the court there. The building wouldn't hold everybody, so they were staggered inside and outside. And to the best of my recollection, the skipper of that boat, Mr. Egger, was spokesman for our boat and our group. And he went in there and it was quite some time before he come out a little later, and we were excused because of the circumstances when it was explained to the Magistrate.

MR. CHARNEY: Objection. Hearsay.

[9] MR. CRANSTON: All right. You may continue however.

A And he come out and we come to find out that we were excused from the citation. And at that time I had business in Anchorage and I flew from Kenai to Anchorage and then eventually flew back to the boat.

Q Are you saying then that the citation—the charges against you were dismissed?

A They were dismissed.

Q Once it was explained to the Magistrate, much as you've done here, why it—

A Right.

MR. CHARNEY: Objection.

MR. CRANSTON: Why the thing took place?

A It was dismissed with the fact that they had no reason to hold us, because it was a thing that happened that couldn't be controlled.

Q All right.

MR. CHARNEY: I assume my objection applied to that answer also.

MR. CRANSTON: Do you recall the date that this took place?

A No. I'd have to refresh my memory by the newspaper, which I've had no prompting or anything on this so far as the exact date. It would have to be—I'd go by the newspaper which had a headline on it of, "A Hundred and One Fishermen [10] Apprehended on the Inlet."

Q All right. I am going to have to get an exhibit. Let's go off the record.

(Whereupon an off-the-record discussion was then had.)

MR. CRANSTON: Back on the record. I am handing you for identification as Deposition Exhibit 2 a page from the Anchorage Daily Times dated Wednesday, July 18, 1951, with the headline, "101 Fishermen Nabbed." Mr. Marchant, I am going to hand you for identification as Deposition Exhibit 2 a page from the Anchorage Daily Times dated Wednesday, July 18, 1951, with a headline "101 Fishermen Nabbed" and ask you if this is the newspaper article you referred to when you mentioned a newspaper article in your earlier testimony?

A Yes. This would be it. This would be it about the one hundred and one fishermen.

Q Were you among those one hundred and one fishermen who are referred to in that article?

A I was.

Q All right. With respect to Deposition Exhibits 1 and 2, I would move their entry into this record as part of this deposition.

* * * *

[11] MR. CRANSTON: All right. Going to another subject briefly, Mr. Marchant, while you were in Cook Inlet fishing did you ever observe any foreign fishing vessels?

A No. Not to my recollection.

Q All right.

A I am going to ask you this one question, what do you mean "foreign"? You don't mean out of state?

Q No. I am referring to those of a foreign country. Different country.

A No.

Q And you fished generally between what areas in Cook Inlet?

A Well, we fished a good portion of the time in the center section of the Inlet.

Q Near the place you were arrested?

A Right in that area. This is where the majority of the fleet fished. Below Kalgin Island. More to the center of the Inlet than anyplace else.

Q And that is generally where you confined your fishing activities?

A That's right.

* * * *

[12] CROSS EXAMINATION

BY MR. CHARNEY:

* * * *

[13] Q This San Juan Fishing Corporation, where was it located?

A On the island of Kodiak in one of the—well, the head company is located in Seattle, but their cannery and everything is on one of the islands of the Kodiak group.

Q They have a plant and all sorts of things?

A It is where they store the boats. They have a cannery, they have living quarters, they have places to work over there. Net repairs, boat repairs. In fact, the whole fleet works out of there. In the wintertime they put the boats up, repair them and put them up and they are raised up out of the water and stored until the next season.

Q Are you a citizen of the United States?

A Yes, I am.

Q Have you always been?

A Always have been.

* * * *

[24] Q Was the citation handed to you?

A No, it wasn't.

Q Did it have your name on it?

A No.

[25] Q Did it say what you'd done that was illegal?

A Yes. To the best of my recollection. I think I mentioned this earlier. That we were cited for fishing too close to another fishing vessel.

Q Do you recall seeing that on the citation?

A I saw the citation, but I can't truthfully say that I recall seeing it. Not in my mind right at this moment.

Q Might it be that somebody told you? Like the skipper of the ship told you that?

A Yes and no. It's probable, but I'm sure I probably looked at it.

Q Who was the Magistrate in Kenai?

A I do not recall his name for the period of time that's elapsed.

Q Glenn Egger was given a citation at the same time?

A We were given a citation as a boat. As a group.

Q Who was Glenn Egger?

A He was the one that was in charge of the boat.

Q Now, let's discuss what happened when you went to Kenai. Where did you go to?

A The Magistrate's office.

Q And did you yourself appear before the Magistrate?

A No. As I stated earlier, we had to all approach as a group and beings there was so many of us, as I recall, the skipper of each boat went in to see the Magistrate [26] independently. And I believe at that time they had more than just one boat in at a time. Now, whether it was for fishing too close or illegal fishing, whatever it was. I can't recall on that point.

Q But, there was this whole group of people all given some kind of a citation?

A Right.

Q And so you didn't appear physically before the Magistrate?

A No, I didn't.

Q Egger did?

A Yes.

Q And did the Magistrate tell you why you were not—why you were being released?

A No. The first notification I had was from Mr. Egger when he come out of the room and says they'd been—we'd been excused from fishing too close because of the circumstances. That was my first—

Q That is your recollection?

A That is my recollection on that.
Q Now, he told you that?
A Yes.
Q Do you have any other—do you know whether the Magistrate issued an opinion? You know, a written opinion or oral opinion saying the reasons for the release?
A No, I don't.
[27] Q So, this was Mr. Egger telling you that you'd been released and giving you the reason that because of the circumstances you were released?
A Right. I knew we were released because there was no fine or we weren't held up or the boat wasn't attached or anything like that.
Q There was no other notification to you about this decision?
A No. Other than the fact that we were free to continue fishing again.
Q Did you fish out in the same area again?
A Yes.

* * * *

[3] GEORGE A. MOSHER, a Material Witness called for examination by Defendant, having been first duly sworn by the Notary, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A George A. Mosher.
Q And what is your address?
A Route 1, Box 89, Long Beach, Washington.
Q And what is your age?
A Thirty-nine.
Q And what is your occupation?
A Commercial fisherman.
Q Is that—are you presently employed by someone, or—
A No; I have my own boat.
Q You have your own boat. Where do you presently engage in that occupation?

A Columbia River and Willipa Bay.
Q Willipa Bay is off the coast of Washington?
A Yeah.
Q Have you ever engaged in the occupation of a commercial fisherman in Alaska?
A Yeah.
Q And when was this?
[4] A Well, 1950. I'm not sure of the other years, it could have been one year before or one year later.
Q In other words you say that you fished up there for three years?
A Yes.
Q And would it have been approximately, you think, from 1950 or '49 through '51, or—
A Yes.
Q Who did you fish for when you were up there?
A You mean the company, or—
Q Right.
A San Juan Fishing Company.
Q Where in Alaska did you fish?
A Well, we fished Cordova, and then we'd go back to Cook Inlet, and then we'd go back to Kodiak Island.
Q And what determined the area you fished in at any particular time?
A Well, the seasons. Cordova was a little bit earlier than Cook Inlet, and then we'd go to the inlet and fish, and then when we got through at the inlet we'd go back to Kodiak and go seining.
Q Do you recall generally the time in the fishing season when you'd be in Cook Inlet, say the month?
A Well, it would have had to have been in June.
Q I see. And what type of fishing did you do in Cook
[5] Inlet?
A Gill net.
Q And could you describe, generally, what you mean by "gill net;" in other words, where is it done and how is it done?
A Well, you have approximately 1200 feet of gill net which you lay out in the inlet where you see the fish jumping and just let it drift with the tide.

Q And this type of fishing, where is it done, generally, with respect to the shore in Cook Inlet?

A Well, it could be any place, wherever you see the fish jumping; it could be in the middle, or closer to shore, one way or the other.

Q By that you mean that, for instance, you were not limited to the shore?

A No.

Q All right. Would you fish—where in the inlet can you carry on your gill net fishery, what portions of it?

A Well, around Kalgin Island, I would say about halfway between Kalgin Island and the Kenai Peninsula.

Q And did you ever go south of Kalgin Island?

A Yeah, I suppose we did; yeah.

Q While engaged in the fishing activity in Cook Inlet were you ever on a boat or were you ever, yourself, apprehended, arrested or stopped by anyone?

[6] A Yes.

Q And would you give the details of this?

A Well, they had a law that the nets couldn't be within 600—had to be 600 feet apart from the other gill netters. So they have crazy tides up there and sometimes the nets get closer than that, so they had the law then that—well, they had the law, and so they picked us all up this one day.

Q By "they", who do you mean?

A Well, a couple guys from the skiff.

Q And who were they, who did they represent?

A I don't know—government, I suppose. I don't actually know who they were.

Q By the "government", what do you mean?

A The Fish Commissioner, as far as I'm concerned.

Q Of the United States?

A Well, yeah, I imagine.

Q Okay. And what were you told to do?

A Well, trying to obey the law we were picking up the nets as fast as we could; and then we had to all go to Kenai and go to court.

Q And did you go to court?

A Yeah—I didn't actually go to court; just the skippers had to go.

Q And what did you do?

A Well, I guess I probably just messed around the courtroom. [7] I was outside, you know, while they were in there.

Q And what was the outcome of the proceeding?

A Well, they figured the law was not enforceable, so they just threw it out of court.

Q Do you know where this took place? About where were you in the inlet when you were boarded?

A Oh, I'd say about five miles—well, down from Kalgin Island, probably about five, six miles out from it towards Kenai. We always fished about—around in that area.

Q Were you within three miles of any shore at this point?

A I don't think so.

MR. CRANSTON: I have no further questions.

CROSS-EXAMINATION

BY MR. CHARNEY:

Q How deep was the gill net you used?

A How deep—I'm not sure.

Q Well, can you give a range, you know? Was it a thousand feet deep or was it—

A Oh, no.

Q —or was it thirty feet deep?

A I'd say between forty and fifty feet deep.

Q What boat were you on?

A It was the S. J. 11—yeah, S. J. 11.

Q What does "S. J." stand for?

[8] A San Juan Packing Company.

Q Where was that boat kept?

A Uganik Bay, Kodiak Island.

Q Could you spell that, please?

A U-g-a-n-i-k.

Q And why was it kept there?

A That's where they kept all their boats in the wintertime—or, all the time.

Q Was this company located on Kodiak Island, then?

A Yeah.
Q Did they have any plants there or—
A Yes, they had a cannery there.
Q Are you an American citizen?
A Yes.
Q Were you when you were on that boat?
A Yes.
Q How about—were you the captain of that boat?
A No.
Q Who was?
A Harry Wilson.
Q Do you know if he was an American?
A Yes, he was.
Q Did that boat fly any flag?
A No.
Q How big was it?
[9] A Thirty-six feet.
Q How big a crew?
A I think we had two men and sometimes three: two in the inlet and three when we were seining.
Q Did you ever pay a fine on that incident you've—
A No, there was no fine; they threw it out of court.
Q How do you know what the commissioner did?
A Well, I was there, but not in the court.
Q Did the commissioner say anything to you?
A No.
Q How did you know it was thrown out of court?
A The skipper told me.

* * * *

[12] REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

Q Do you recall the date that this incident which you've told us about today took place?
A No, I don't.
Q Would it have been the same date that Cort Marchant and Glenn Eager were involved in a similar situation?

A Same date.

* * * *

[2] RONALD C. NAAB,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A My name is Ronald C. Naab.
Q What is your present address, Mr. Naab?
A I live in Auke Bay.
Q Where is your present business address?
A I am with the National Marine Fisheries Service, United States Department of Commerce, in Juneau.
Q What is the particular position you hold with the National Marine Fisheries Service?
A I am the Fisheries Management Supervisor with the Division of Enforcement and Surveillance.
Q Over what areas do you presently have supervision?
A Over all the National Marine Fisheries Enforcement and Surveillance Program in the entire Alaska Region.
Q What area does the entire Alaska Region encompass?
A The same area as the State of Alaska.
Q Would you just give some background as to the type training that you have had, say, your education and post education [3] training for this position or any other position you have held.
A I have a Bachelor of Science degree in Fish and Game Management from Oregon State University. Following college I was in the military for two years. Following that I was a fishery biologist with the Oregon Fish Commission in Astoria, Oregon, working on salmon.

In 1957 I joined what was then the Fish and Wildlife Service as a fisheries management biologist, stationed in Cook Inlet, and was employed there from about May of '57 to September of '59. At that time I was transferred to Galveston, Texas, as a fishery research biologist, still with the Fish and Wildlife Service.

In about January of '61 I returned to Alaska, employed as an Assistant Area Fishery Administrator, again stationed in Cook Inlet, and in about September of '61 I transferred to Juneau in my present position.

• • • •

[10] Q In respect to what you did in the Cook Inlet District, would you describe generally what your duties and responsibilities were?

A We were responsible for establishing the fishing periods that would be allowed for commercial fishing, establishing the types of legal gear, establishing the districts in [11] which certain types of fishing would be permitted. We were also responsible for determining the escapement of salmon to the various spawning streams in Cook Inlet, some stream enhancement in such forms as removal of barriers to spawning grounds, and then also enforcement of the commercial fishing regulations in Cook Inlet District.

Q This you would say was your primary responsibility in that office?

A Yes.

• • • •

[25] Q When you were in the District Office in Anchorage, the Cook Inlet District, were you yourself well acquainted with the fishery laws and regulations of the United States as they affected Alaska?

A Yes, and particularly as they affected Cook Inlet.

Q Again, the only laws or regulations, directives, and so on of which you are aware which defined the Cook Inlet District are those regulations to which you referred earlier?

A Yes.

Q Were those the regulations that were promulgated under the Act known as the White Act?

A I believe they were.

Q That's that 1925 Act relating to the fisheries of Alaska?

[26] A I believe so.

Q Those, again, so far as you are able to remember or recall are the only written documents or what have you which would define the Cook Inlet area as you were stationed there?

A They are the only ones I am famiilar with, yes.

Q When you enforced or were carrying out your activities in the Cook Inlet area did you make any distinctions in your duties relative to the particular water areas of Cook Inlet over which you exercised any control or enforcement activities?

A We made distinctions as to within what area, what legal fishing time and legal fishing gear was permitted, yes.

Q What about territorial areas? In other words, what areas of Cook Inlet did you patrol?

A Essentially, with a few exceptions of the outer regions, we patroled all the areas defined by the regulations.

Q I see.

A It was not limited to any particular distance offshore.

Q You would patrol irrespective of the distance you were from shore; is that what you mean?

A If there was a likelihood that somebody was doing something that was contrary to the regulations in that area, yes.

Q Do you know offhand, is there any chart, map, document, letter, anything which can be characterized as a written representation of the limits of what we would call the [27] territorial sea in Alaska?

• • • •

[32] MR. CRANSTON: Can you mark this as Deposition Exhibit "2"? (Whereupon C. & G. S. 8502 chart of Cape St. Elias to Shumagin Island, 16th Ed., July 4, 1970, was duly marked as Deposition Exhibit "2" by the reporter.)

(Off the Record)

Q I'm going to hand you what has been marked as Deposition Exhibit "2", which is Chart 8502 of the U.S.G.S., dated July 4/70, N.M. 27/70, Price $1.50. I ask you, do you recognize that general area depicted on that chart?

A Yes, I do.

Q And the general area depicted on that chart, even though not precisely the same insofar as Cook Inlet is concerned, is the area for which you were responsible as the—what was your position again in 1957 through '59?

A Fishery Management Biologist.

Q That area of Cook Inlet is the area for which you were responsible?

A The area on the chart that I'm looking at encompasses the area for which I was responsible.

Q You have stated earlier that your primary responsibility was to see that the Federal Fish and Game laws and [33] regulations were enforced in the Cook Inlet area in those years; is that correct?

A Yes.

Q And you did testify that generally in regard to patroling the area in aid of your enforcement you used patrol boats and patrol aircraft?

A Yes.

Q And I guess you also testified you used other vehicles. What other vehicles would those have been?

A Cars, trucks, panel wagons, mainly. Where there was a road system we used mostly vehicles.

Q But so far as the water areas were concerned I guess of necessity you were limited to aircraft and patrol vessels?

A Yes, and occasionally small outboard skiffs in areas where the stream guards had such a boat.

Q Did you at that time, in regard to this enforcement responsibility, feel that your enforcement capabilities were adequate or not?

A No. I don't think anybody charged with policing such a big area as this or other areas, any enforcement personnel generally feels he has adequate equipment to really cover his responsibility.

Q Did you ever communicate to anyone, either below you or under you, in writing your feelings along this regard?

A I cannot remember communicating this in writing to my [34] supervisor. He was aware verbally of my feelings on this.

Q You communicated your feelings on this to Mr. Skerry?

A To Mr. Skerry, Yes.

Q And so far as you can best remember nothing was communicated in writing on this subject or related to it?

A Not from me.

Q From anyone else?

A I'm not sure if Mr. Skerry relayed our concern to the Regional Office here in Juneau in writing or perhaps verbally. I know they were aware, the people in Juneau were aware, that we felt we needed additional equipment and people and money.

Q In respect to the patrol boats or vessels which were used in Cook Inlet during the time of your responsibility there, do you know the names of any of the vessels used?

A Yes. We had permanently assigned to Cook Inlet for at least, as I recall, two years a boat called the "Grayling", which was generally based at Seldovia, although she was used throughout the inlet. At least one summer we had a vessel from the Vessels Division here in Juneau called the "Widgeon", I believe was the one we had. That's the only two I recall being in the inlet during my period there.

[35] Q Do you remember who the officers in charge of these vessels were or are?

A The "Grayling" was run by C. Ralph Magee. The "Widgeon"—the year that I remember her being there was run by Louie McDonald I believe.

Q Do you know where any of these individuals may be?

A The last I had heard (this was several years ago) Mr. Magee had, I presume, retired. He was no longer employed by us at least and he had left Seldovia and was going to live in Florida. I have no idea where in Florida.

Louis McDonald was in Juneau for a period of time. I'm not sure if he's here currently or not.

Q Do you know the names of any of the crew members on these vessels?

A This Chuck Wilson who I said eventually came to work as an assistant to us was at least one year the second crew member on the "Grayling", which is all she ever carried. I don't remember any on the "Widgeon".

Q Do you know where Mr. Wilson might be?

A Again, Mr. Wilson the last I heard was in the Spokane, Washington, area.

Q So in regard to the patrol vessels during your period of responsibility, you can recall the names of two vessels and the names of three individuals who were aboard those vessels?

A Yes.

[36] Q During any other periods of time with which you are familiar, even though you may not have been directly responsible for the area, were there any other vessels or any other names of individuals whom you might be able to recall?

A At sometime in the '50's, possibly '55 or '56, a man named Fred Headlee ran a patrol boat up in Cook Inlet. Right at the moment I can't recall the name of the patrol boat but it may well have been the "Grayling", but I know he did run a patrol boat in the inlet.

Q Was he employed by the Fish and Wildlife Service?

A Yes, he was; by our agency.

Q Was there a vessel called the "Teal" in Cook Inlet during any of these years?

A There could have been; yes.

Q You have no direct information relative to the "Teal" or recollection of it?

A I don't believe the "Teal" was in the inlet during the time I was in the inlet. I'm fairly confident of seeing something that she has worked in the inlet but I can't recall if she was there when I was there or not.

Q By reference to any land marks on Deposition Exhibit "2" that you would like to refer, could you indicate within what areas on Cook Inlet your agency's vessels patroled while you were responsible for that district?

I'll even make it a little more definite. What were the southernmost [37] limits patroled by your agency's vessels while you were stationed in the district?

A The farthest south I know that any of them operated was down here in the Port Dick-Port Chatham area in the southern Kenai Peninsula.

Q Would you describe, perhaps, the southern boundary then as being the vicinity of Point Gore?

A Yes, I'm sure they were down in the Point Gore area.

Q And thence westward from Point Gore, or the two areas which you named, where did they patrol?

A The vessels generally worked, as I said, from the area I indicated along the shore of Kenai Peninsula up through Kachemak Bay and along the shore, and once we passed the latitude of Anchor Point they operated all through the central inlet, if we can call it that. I believe it was occasionally, once or twice, when we had a ship working along the west side but due to weather this was generally not a highly patroled area by vessel.

Q When you say once they got beyond the latitude of Anchor Point they patroled, you say, throughout the inlet—What do you mean?

A Throughout the middle inlet. We had a drift gill net fishery operating from roughly the latitude of Anchor Point to about a line between east and west foreland. This was an area where they had gill net fishing.

[38] Q Was there any drift gill net fishing in the inlet south of Kachemak Bay and west of Kachemak Bay, say between Kachemak Bay and Cape Douglas and Barren Island?

A No, not to my knowledge.

Q Was there any type of fishery in that area?

A Yes.

Q What was the fishery in that area?

A Shrimp fishery and crab fishery; shrimp I should say in Kachemak Bay; the crab fishery, primarily king crab, in Kachemak Bay; some of the other bays along the outer Kenai Peninsula and in Kamishak Bay on the west

side of Cook Inlet; salmon fisheries along the entire shoreline of both the west side of Cook Inlet and the east side of Cook Inlet.

Q Was there any fishery in the area of Cook Inlet out from the shore south of Anchor Inlet?

A No, not that I have ever observed.

Q Are you aware of any circumstances when patrol vessels did patrol the waters out from the shore in any area south of Anchor Point?

A No, and I think had they been operating in the offshore waters in lower Cook Inlet it probably would have been merely in transit from one patrol area to another one.

Q Was there any halibut fishery down in that area?

A There is some halibut fishing in this area, yes, to my [39] knowledge particularly along the Kenai Peninsula, Kachemak Bay, out to Port Dick at least.

Q Was it your responsibility when you were in the Cook Inlet District to enforce whatever laws, regulations and treaties that applied to the halibut fishery?

A Yes.

Q Do you recall that on January 7 of this year you had a conversation with an individual from the State of Alaska named Dale Cheek?

A Yes.

Q Did you discuss with Mr. Cheek the area of Cook Inlet which was patroled by vessels while you were serving in the Cook Inlet District?

A I may well have, yes. I don't recall specifically that frame of reference.

Q But putting it in whatever frame of reference you would like, what generally did you discuss with him concerning the patrol activities of your agency in Cook Inlet while you were in the district?

A I'm sorry, I don't understand the question.

Q Generally what did you discuss with Mr. Cheek at the time of this discussion?

A Well, as I recall, we discussed the fact that I had worked in Cook Inlet, that I had patroled the fisheries in this particular area, and we discussed the type of fishing that was [40] conducted, the general areas within the area

where the fishery was conducted, and as I recall, some of the methods of patrol that we used in the areas that we covered. Do you recall specifically that you referred to a map of Cook Inlet, or a map of Alaska which included Cook Inlet, and you told Mr. Cheek while indicating an area between Point Gore, the Barren Island and Cape Douglas that vessels under your control or direction, or your agency's control or direction, patroled all of that area?

A I may have told Mr. Cheek that we were responsible for patroling all of that area but I do not remember saying that when I was in Cook Inlet that we had vessel patrols in that particular area.

Q But you did tell him you were responsible for patroling the area between Point Gore and Barren Islands and Cape Douglas?

A Yes, because this is part of our district boundaries.

Q In other words, it was your impression at the time and you interpreted the duties of your office at that time that all of that area was under your responsibility insofar as patrol activities were concerned?

A Yes. As I indicated, we patroled lower Kenai Peninsula; we patroled the west side of Kamishak Bay down as far as Cape Douglas. I was personally on a number of patrols that were down that far.

Q And you also interpreted at that time that had the necessity [41] arisen it was your responsibility to patrol the water areas between Point Gore and Cape Douglas?

A Had the necessity arose, yes.

Q When I started this line of questioning I was referring mainly to patrol vessels. I think I started out in that regard. How would you describe the activities of patrol aircraft at the time you were in Cook Inlet? Would they be any different from the activities of patrol vessels?

A Yes.

Q Would you describe their activities?

A I'm not sure what you mean by activities. The aircraft was our principal form of patrol craft that we relied upon simply because of the distances involved, and the aircraft was used for patrol primarily along the

entire shoreline of the entire Cook Inlet District, for patrol, provisioning of our stream guards, and in some cases stream surveys, all types of work.

Q Was the aircraft also used for patrol of the water areas in Cook Inlet?

A As needed, yes.

Q Could you describe within what boundaries the patrol aircraft patroled on Cook Inlet?

A The area of primary patrol probably was along the shorelines of Kenai Peninsula and the west side of the inlet. The area of primary patrol at some distance from shore was [42] mainly between the area east and west forelands in the latitude of Anchor Point.

Q And in regard to the other areas of Cook Inlet, say north of a line from Point Gore, Barren Island to Cape Douglas, did you consider at that time that all areas north of that line were within your area of patrol responsibility insofar as aircraft patrols?

A They were in our area of responsibility for aircraft or vessels, of course. There was little, if any, active patrol in this area. The area was transit, it going to and from the east and west side.

MR. CHARNEY: Could I ask, has he specified this area?

A This area, I mean the area at some distance from shore south of the latitude of Anchor Point.

Q Would you characterize the reason for lack of patrol activity in that area because of a lack of intensive fishing in that area?

A Yes, a lack of any fishing in that area.

Q And that you would characterize as the sole and primary reason for lack of patrol in that area, that is, south of the latitude of Anchor Point?

A Yes.

Q Generally when we're talking about the fishing laws and regulations which you were charged for enforcement of, will you characterize those as you were looking to see [43] if there were any violations of the regulations which prohibited purse seining in Cook Inlet? First of all, was there such a regulation which prohibited the use of purse seines in Cook Inlet?

A Yes.

Q This is one of the things you were looking for; is this correct?

A Yes.

Q What, generally, were your requirements as to the use of drift nets in Cook Inlet?

A They were allowed to fish with a certain length of net, with certain mesh sizes, during certain periods, and in certain areas.

Q Were there any laws and regulations relative to the spacing between drift nets?

A Yes.

Q Generally, what were those?

A I forget the precise distance, but there were some regulations to forestall creating an impenetrable barrier of nets across any particular area. There was a requirement saying that drift gill nets could be no less than so many feet or so many yards apart. I've forgotten precisely

* * * *

[46] Q Were any personnel under your authority or under the direction of your agency charged or vested with the authority [47] to make arrests for violation of fish and game regulations or laws? In other words, what arresting authority did you or anybody of whom you may be aware have?

A We had authority to arrest anybody violating the Federal regulations concerning commercial fisheries.

Q Specifically did this apply to you and all personnel supervised by you?

A Generally. At times we had personnel working with us or for us that were primarily conducting research programs of some sort. Each employee was issued an appointment paper and on that appointment paper it indicated whether he did or did not have enforcement authority. There were a few individuals who did not carry enforcement authority; most of them did.

* * * *

[50] Q During the period of time with which you are familiar with Cook Inlet, that is the enforcement activi-

ties of your service, are you aware that any foreign fishing activities—by foreign fishing I would refer to vessels of a foreign country, nationals or residents of a foreign country, [51] that sort of thing—was there any of this type of activity carried on in Cook Inlet?

A Not that I am aware of.

Q By that, just for purposes of that question, I would say again, north of the line from Point Gore to the Barren Islands to Cape Douglas?

A Yes; none in that area that I know of.

Q Were you under any particular directives, oral or otherwise, with respect to what it was your responsibility to do had you discovered or been made aware of any foreign fishing activity north of the line which I've described?

A We were under instructions that had we found a Canadian halibut vessel violating halibut regulations that he was to be apprehended and turned over to the government in Canada for prosecution in accordance with the Halibut Convention. Other than that we had no specific instructions concerning other foreign activity.

Q During that period of time when you were in the District Office in Anchorage what would you have done had a foreign fishing vessel shown up in any of the waters north of a line from Point Gore to Cape Douglas or the Barren Islands to Cape Douglas?

A I would have asked for advice from my supervisor.

Q In respect to the Canadian vessels and the halibut fishery to which you refer, would that action which you described [52] you would have taken apply to a vessel located anywhere north of the line from Point Gore to the Barren Islands to Cape Douglas?

A If he was violating halibut regulations, yes.

Q I take it then you were not aware whether any foreign vessels have ever been arrested in Cook Inlet for violation of any fishery law or regulation of the United States or the violation of any treaty of the United States?

A There were none apprehended and there were none in the inlet to my knowledge when I was there. I am aware of some previous cases that were cited in, oh, for instance, the Amicus Curie.

Q I think that related to Bristol Bay, but so far as Cook Inlet is concerned you are not aware of any?

A No.

* * * *

[59] Q I'm going to hand you what has been marked for identification as Deposition Exhibit "3" and ask you if you recognize that.

A Yes, I recognize it.

Q Would you describe what it is, please?

A It's a response to Mr. Clarence Nordal, Deep Sea Fishermen's Union of the Pacific, Seattle, which I prepared in April of 1969.

Q At whose direction then was this letter written?

A At my direction.

Q You wrote it without any direction from a superior in your department or any other department?

A Let me put it this way: Mr. Nordahl's letter came in and was routed through my Regional Director's office, was sent down to me to respond to the letter, and my Regional Director was aware of my response.

Q Prior to your writing of this letter did you confer with any other officials, agencies, employees, or persons with responsibility to the Federal Government?

A No.

Q Specifically did you discuss this matter with any persons from the Department of Justice?

A No.

Q From the State Department?

[60] A No.

Q Referring again to Exhibit "3", on page two the portion right after the listing of the radio stations, commencing, "The highly irregular and deeply indented Alaskan coastline" and so on—in that paragraph you state generally that the United States has subscribed to the semi-circle test and the twenty four-mile closure lines, and in that you reached the conclusion as follows, "Using these procedures and guidelines provided us by the Department of State, the closure line," (I'm paraphrasing) in Cook Inlet intersects the southern tip of Kaglin Island quite some distance up the inlet. Upon what did you base this conclusion of yours in the letter?

A This was based upon the State Department publication referred to which was by G. Etzel Pearcy concerning measuring of the U.S. Territorial Sea and from charts which we have for enforcement guidance which we referred to before.

Q Those are the charts which you got in 1963?

A Yes.

Q And the State Department publication, do you recall its date?

A No, I don't. It's quite old because I know we've had it in our office quite some time.

Q Was it in existence, say, when you were in the Anchorage District Office?

[61] A I don't know.

Q Had you reached this opinion or conclusion stated in this part of the letter to which I referred on the basis of consultation with any individuals?

A No.

Q In other words, the only two things you relied upon were the State Department publication and the charts; is that correct?

A Yes.

Q Is a copy of the State Department publication in your files?

A Yes.

Q Would that be made available for inspection and copying by the State of Alaska?

A Yes.

Q Had you formed your opinion and conclusion relative to the existence of the closure line across Cook Inlet south of Kalgin Island at any time prior to your writing of this letter of April 1, 1969?

A I had concluded upon receiving these charts for our guidance that this apparently was the closure line by which we were to abide.

Q In other words, it's fair to say the first time you reached this particular conclusion was sometime in 1963?

A Yes.

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[66] Q Incidentally, would records of activities in Shelikof Strait, the arrest records and what have you, be also on file in this office here in Juneau?

MR. CHARNEY: I would object to that for the same reasons.

A Yes, either in Juneau or in the Federal Records storage. It depends on the type of violation you're discussing. In my office we have a complete file on at least the halibut violations, as I recall, since about 1950, and violations again preceding Statehood involving Shelikof Strait or any other area are in Federal Records in storage.

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[68] CROSS EXAMINATION

BY MR. CHARNEY:

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[71] Q Did you patrol off of Resurrection Bay?

A Yes.

Q Where is that?

A The southern portion of Cook Inlet. It's the entrance to the City of Seward.

Q Did you patrol off of Aialik Cape?

A Yes, we patroled off Aialik Cape?

Q Did you patrol more than three miles from Aialik Cape?

A Yes, we did; as well as other areas on the south side of Kenai Peninsula.

Q More than three miles off shore?

A More than three miles off shore, yes.

Q And more than three miles from the closing line of Resurrection Bay?

A Yes, or the other bays.

Q You mentioned the Halibut Convention. What countries are members of it?

A The United States and Canada.

Q Does the Convention give the United States jurisdiction over Canadian vessels?

A Yes, in international waters.
Q On the high seas?
A On the high seas.
[72] Q How does this work?
A The Convention between the two governments says that vessels of either country when found violating regulations of the Convention can be seized in convention waters, which includes the high seas, and transferred to the flag government for prosecution.
Q Who promulgates the regulations?
A The International Pacific Halibut Commission, which is a body formed under the auspices of the Halibut Convention.
Q Are they the only regulations under the Halibut Convention?
A Yes.
Q Then when you spoke of enforcing the halibut regulations you meant the Convention regulations?
A Yes.
Q And you could seize a Canadian vessel violating these regulations on the high seas?
A Yes.
Q Can foreign vessels be seized by the United States on the high seas while fishing, absent a convention such as the Halibut Convention?
A No.
Q Thus if a Soviet vessel fished right alongside the Canadian vessel for halibut during the closed season you could arrest the Canadian vessel but could you arrest the Russian?
A No. We could seize the Canadian vessel but not the Russian.
[73] Q You described limits of borders in your letter to Mr. Nordahl, Deposition Exhibit "3". Are those the closing lines for Cook Inlet that are found on the maps referred to in Deposition Exhibit "1"?
A Yes.
Q So that set of maps shows high seas in lower Cook Inlet?
A It shows the area outside three miles for enforcement purposes.

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Q Had anyone ever told you that Cook Inlet was inland waters or territorial sea?
A No.
Q Were you ever told whether the White Act or its regulations were to be enforced against foreigners?
A No, I wasn't.
Q What were you to do in the case of foreign fishing in Cook Inlet?
A We were under no direct instructions as to what to do in the event we found a foreign fishing vessel. In the absence of these instructions, of course, as always we were to seek [74] advice from the District Office, or Juneau in the absence of a District Office.
Q Subsequent to the receipt of the maps referred to in Deposition Exhibit "1" were the enforcement activities of N.M.F.S. (then B.C.F. and now N.M.F.S.) fashioned on the basis that lower Cook Inlet was high seas or territorial waters?
A We had no specific procedure in mind there. We did not know whether it was high seas or territorial waters.
Q I'm saying subsequent to.
A Oh, subsequent to the receipt of the charts?
Q Yes.
A We treated them as being high seas in accordance with those maps we received.

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[75] Q To your knowledge have there been any arrests or boardings in Cook Inlet in the area described as high seas in the Nordahl letter, Deposition Exhibit "3"?
A Arrests while I was working in Cook Inlet or subsequent to that?
Q Right.
A No, there haven't been.

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[2] RONALD C. NAAB,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Ronald C. Naab.
Q And what is your address.
A My working address is National Marine Fisheries Service, Box 1668, Juneau.
Q What is your age?
A I'm thirty-nine.
Q What is your present occupation?
A I'm supervisor of the Enforcement and Surveillance Division of the National Marine Fisheries Service.

MR. CRANSTON: May I ask who just walked into the room?

MR. CHEEK: This is Mr. Weberg of the Alaska Department of Fish and Game.

Q Are you the same Ronald Naab whose deposition was taken earlier in this action, in February of 1971?
A Yes, I am.
Q Were you served with a Subpoena Duces Tecum to appear at this deposition?
[3] A Yes, I was.
Q Have you brought any documents with you which were described in that Subpoena Duces Tecum?
A I have brought the documents which I thought were responsive to the Subpoena.
Q Are those documents certain maps and charts pertaining to Alaska?
A Maps and charts pertaining to lines off Alaska, together with file material and correspondence relating to these lines.

MR. CRANSTON: At this point I will ask for a short recess in order that the State may examine the

documents which have been brought in preparation of asking further questions.

(RECESS)

MR. CRANSTON: First I would like marked as Defendant's Exhibit 1 to this deposition a map, number 1-J, "Department of Lands, Forests and Water Resources, British Columbia", a map of British Columbia. If you would staple "Exhibit 1" onto this map for identification, please.

(Whereupon the above-described map was marked Defendant's Exhibit "1" by the reporter.)

MR. CHARNEY: Mr. Cranston, before we proceed I think it would be appropriate to get on the record what [4] we've agreed to do with respect to these documents. Do you want me to state it or do you want to?

MR. CRANSTON: All right. The State proposes to do the following with these exhibits: that each exhibit will be identified by virtue of a slip of paper with the exhibit number on it. That paper will be stapled to the map. The map will then be transmitted to a company or facility capable of reproducing the map and the reproduction copy of the map shall be attached as the physical exhibit to the deposition. Copies will also be sent to the plaintiff and the defendant as exhibits to their copies of the deposition. The Federal Government, the State understands, if this procedure is followed will not raise the best evidence objection relative to the exhibits which may be introduced in evidence as copies of the maps which are lodged in the Juneau office of the National Marine Fisheries Service. Is this your understanding, Mr. Charney?

MR. CHARNEY: Yes, substantially. What I would prefer, and and I hope this would be appropriate, is that the documents that we are looking at today will be kept in the custody of National Marine Fisheries Service until the State of Alaska notifies Mr. Naab [5] of the firm to which these documents shall be sent. They will be sent directly to them for reproduction and return of the originals to National Marine Fisheries Service of Juneau. Is that appropriate or how would you like it to be done?

MR. CRANSTON: This is fine, so long as the copies are retained separately together with the exhibit numbers remaining on them.

MR. CHARNEY: Retained forever?

MR. CRANSTON: No; until they are sent down to the reproduction agency.

MR. CHARNEY: Fine.

Q Mr. Naab, I will hand you Defendant's Exhibit "1" and ask you if this has been retained in the files of the Juneau office of the National Marine Fisheries Service.

A Yes, it has.

Q Would you, if you know, describe the manner in which this map became lodged in the files of the National Marine Fisheries Service?

MR. CHARNEY: At this point I will enter a general objection as to the questions with respect to this exhibit; objection on the grounds of relevance.

MR. CRANSTON: You may continue to answer the question.

A The chart was prepared by one of my subordinates for use at a meeting with Canadian fisheries officials. As I [6] recall it was held in Seattle. The general subject of the meeting, as I remember, was lines beyond which U.S. and Canadian nationals would not be permitted to fish salmon with nets.

Q Do you know what subordinate of yours prepared this map?

A Sid Morgan.

Q Is he still with your office?

A No, he's not.

Q Do you know where he is?

A He was transferred to the Bureau of Sport Fisheries and Wildlife here in Juneau.

Q Do you know what position he held when he prepared this map for you?

A He was a Fisheries Management Agent with my office here.

Q When was the map prepared?

A As I recall, it was in the fall of 1965.

Q Was the meeting at which this map was presented also in the fall of 1965?

A I think so.

Q What nations were in attendance at this meeting?

A I was not at the meeting itself. I presume there were Canadian officials and U.S. officials.

Q And the meeting was in Seattle?

A As I recall.

MR. CHARNEY: I object to this as hearsay.

[7] Q You did testify that you knew the purpose of the meeting; is that correct?

A I said I thought that was the purpose of the meeting.

Q Was the meeting, so far as you are aware, engaged in between the United States and Canada pursuant to any treaty or any other agreement between the United States and Canada?

A No.

Q Was it used for the purpose of implementing or establishing a practice under any treaty that exists between the United States and Canada?

A Perhaps, indirectly. The United States regulation concerning offshore net fishing is a regulation that was brought into effect under the authority of the International North Pacific Fisheries Convention, which includes the United States, Canada and Japan.

Q And you say this line on this map was drawn to indicate the line seaward of which fishing for salmon with nets would be prohibited?

A The lines that are shown on this map, the ones off the British Columbia coast, are a copy of the salmon net fishing lines, or surf lines as the Canadians call them, beyond which they do not allow their nationals to fish for salmon with nets. This was copied from a Canadian chart. The other lines off Southeast Alaska are a copy or a duplication of the three-mile limit prepared by Mr. Pearcy [8] in 1963, which was sent to us for enforcement and guidance purposes. It was not put on here to have any direct relation to salmon net fishing off Southeast Alaska.

Q By Mr. Pearcy you refer to Edsell Pearcy?

A G. Edsell Pearcy, Department of State; yes.

Q Do I understand you correctly that the line off Southeast Alaska on this chart is not intended to have any effect upon the fishing for salmon with nets on the high seas?

A It does not depict the line, or a line beyond which they cannot fish for salmon. I believe it was prepared mainly to get a comparison between what the Canadians use as their surf lines and what could be used by the United States as a comparable line for U.S. nationals.

Q Is there any chart or map which you have brought with you or of which you may be aware which continues the line depicted on Exhibit "1" past Cross Sound?

A I would have to look at what I've brought with me. There may be a possibility of some inside this other tube.

Q All right.

(Whereupon witness examined other maps and charts.)

A Apparently the line was only projected to cover the waters off Southeast Alaska and it was not drawn past the entrance to Cross Sound.

Q Again, this is an exact replica you say, of a line prepared by G. Edsell Pearcy?

[9] A Mr. Morgan was instructed to copy the lines that Mr. Pearcy had prepared and put them on these new charts. I suspect that other than perhaps some minor errors they are an exact copy, yes.

Q What was the purpose again for which Mr. Pearcy prepared these lines?

A The charts which Mr. Pearcy prepared were—they were transmitted to us with a covering memorandum indicating that these depicted what could be considered the current U.S. three-mile limit, territorial sea limit, and also on those charts were some possible base lines which might be applied by the United States. The charts were sent to us with instructions to conduct a study as to what additional fisheries resources might be protected by the United States if these possible base lines were put into effect.

Q Have you brought with you the original charts and the cover letter of Mr. Pearcy?

A I have the charts and I'm sure the cover letter is also here.

Q Would you produce them, please?

A Yes.

Q Mr. Naab, you have produced a set of charts numbered 1 through 18. However, I do not find a number 6 on these charts. Is there a chart numbered 6?

[10] A The last time Mr. Morgan had occasion to use these charts he noted that chart number 6 was missing. I presume there was a chart number 6 and somewhere throughout the years it has been lost.

Q Do you know the area of the coast chart number 6 depicted?

A I am pretty sure it must have covered the area between chart number 5 and chart number 7, the area between Yakutat Bay and Prince William Sound, presumably the Copper River area.

MR. CRANSTON: I would think it might be best to treat this series of charts as one exhibit with each portion of the exhibit further identified by the chart which is numbered in it. So I would ask the reporter to mark for identification the series of charts numbered 1 through 18, less chart numbered 6, as Defendant's Exhibit "2" to this deposition. Those were the charts described by the witness as being transmitted to the National Marine Fisheries Service under a cover letter as those charts upon which the Geographer of the United States, G. Edsell Pearcy, drew some lines.

A Here's the transmittal letter.

MR. CHARNEY: I would recommend that each exhibit be marked "2-A" or whatever it is all the way through.

MR. CRANSTON: This is fine. Chart 1 will be marked [11] as Exhibit "2-A", chart 2 "2-B", and then consecutively throughout, using letters following the numbers of the charts.

(Off the record)

(Whereupon the above-described charts were marked Exhibits "2-A" through "2-Q" by the reporter.)

MR. CRANSTON: I would ask the reporter to mark as Defendant's Exhibit "3" the memorandum dated May 20, 1963, to the Regional Director, Region 5, Bureau of Commercial Fisheries, Juneau, from Director, Bureau of Commercial Fisheries; Subject: Instructions re Baselines Charts for Alaska.

(Whereupon the above-described document was marked Defendant's Exhibit "3" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked as Defendant's Exhibit "3" and ask you if this is the letter which accompanied the charts identified in their entirety as Exhibit "2" to this deposition.

A Yes, it is.

Q With respect to the charts described in their entirety as Defendant's Exhibit "2", has any use been made of them by you or anyone in your office?

A Yes.

Q What particular use has been made of them?

A For one thing they were the basis for the study that was requested in that memorandum, and they have been used, [12] as I indicated, to give us guidance on a number of things such as a comparison with the Canadian surf lines as to what might be construed as being the U.S. Territorial Sea of Alaska. They were forwarded to us as guides to use in our enforcement of the three-mile limit.

Q I notice that each of the charts has numbers appearing on them. For instance, Exhibit "2-A" has a black line with the numbers 112-30 within two black lines. What does that indicate?

A Those lines and code designations were put on the charts by our Statistics Liaison Officer here in Juneau and they were to determine the Alaska Department of Fish and Game statistical areas encompassed within these particular areas so that we could use the Alaska Department of Fish and Game catch statistics in determining what additional fisheries resources would be protected by a possible straight baseline system.

Q You have indicated that you did make a study as requested by the memorandum described as Exhibit "3".

The study to which you refer is—I assume that it involves the additional fishery resources, in terms of annual poundage and value of present and reasonably potential use which would be reserved to American fishermen by application of straight baselines?

A Yes, I think it is.

[13] Q Was that study ever prepared in writing?

A Yes, it was.

Q Have you brought a copy of that study with you?

A Yes, I have it here.

Q Could I see it, please?

A Yes.

MR. CRANSTON: I would like to have this document dated July 12, 1963, and entitled "Additional Fishery Resources of the Alaska Coast which would be reserved for American Fishermen if the United States adopt the 'Straight Baseline Method' as set forth in The Geneva Convention, 1958" Exhibit "4".

(Whereupon above described document was marked Defendant's Exhibit "4" by the reporter.)

Q Mr. Naab, I'll hand you Exhibit "4" and ask if that is the study to which you referred as having been made as a result of the request contained in Exhibit "3"?

A Yes, it is.

Q On Exhibit "2-H", which depicts the region of Lower Cook Inlet, there appear blocks within black lines with numbers in them. These are again—for instance, number 249, this is an Alaska Department of Fish and Game statistical area?

A Yes, I'm sure it is.

[14] Q Do you know exactly to what use the Alaska Department of Fish and Game puts these statistical areas?

A I don't know what uses they make of them but that's the areas that they use in which to determine the amount of catch that came from any particular area.

Q And these are the boundaries, so far as you understand, of the statistical areas as described in the regulations of the Alaska Department of Fish and Game?

A That's my understanding.

Q Let me ask this question, Mr. Naab: Who was actually responsible in your office for making the actual comparisons between what the difference between fishery resources outside the three-mile limit and inside the three-mile limit would be? Was there one person assigned to this task in particular?

A Yes, there was. He was not directly connected with my office. He was the Statistical Liaison Officer at the time.

Q What was his name?

A William K. Evans.

Q Is he still with you?

A No, he is not.

Q Do you know where he is?

A The last I had heard of him he was in private business in Anchorage.

Q What was his exact position with the Bureau of Commercial [15] Fisheries at that time?

A Statistical Liaison Officer.

Q Who gave him instructions as to how to prepare his study?

A I presume it would have been given to him by the Regional Director, which would include the Assistant Regional Director or Regional Director Rietze.

Q Who would the Assistant have been at that time?

A At that time it was Robert Simpson.

Q Do you know, with regard to the area of Lower Cook Inlet, if included within the statistics of the then fish resource under the jurisdiction of the State or of the United States if included therein were the Fish and Game statistical areas as depicted on this chart? Do you follow my question?

A No, I don't.

Q As I understand it the study was to determine, was it not, the additional fishery resource which would become available to our jurisdiction (I mean the United

States' jurisdiction) if the system of straight baselines were followed; is that correct?

A Yes.

Q In Lower Cook Inlet we have, for instance, Statistical Control Area 249. Was the fish resource within that area included within the base resource available under United States jurisdiction by virtue of the application of the three-mile limit or was it considered as an [16] additional resource which would become available if a system of straight baselines were followed? I'm trying to determine in which category Control Area 249 was placed.

A I cannot be sure what catch statistics Mr. Evans included in the specified areas. However, in looking at these charts I would presume that catch statistics for 249 would not fall in either category because the possible three-mile zone is shown in red here. The additional areas that would be encompassed by a straight baseline are shown in green, and neither of those zones occur in Statistical Area 249.

Q I take it then that 249 would not have been included in either of the catch statistics, either those which were available by virtue of an application of an assumed three-mile limit in Cook Inlet or straight baselines?

A Again, I did not make the study, but looking at the charts I would think not.

Q In other words, it would be your opinion on analyzing the charts that 249 would be subtracted from either of those totals?

A I don't think 249 statistics would enter into the totals at all. Again I'm speculating because I didn't do the actual study myself.

Q And Mr. Evans would be the person most likely to know this?

A I would think so.

[17] MR. CHARNEY: Would you tell me what map we're looking at here, the number?

MR. CRANSTON: This is Exhibit "2-H".

Q Do you know whether these maps which are in the aggregate depicted as Exhibit "2" have been transmitted to any foreign countries?

A I don't believe they have; not to my knowledge.

Q Were there any other areas of the United States for which similar charts or maps were prepared with the same purpose in mind?

A I don't know.

MR. CRANSTON: Let's go off the record a minute.

(Off the record)

MR. CRANSTON: I would have marked as Defendant's next in order (that would be 5) Coast and Geodetic Survey Chart 8152. Fourth Edition, March 11, 1933; revised March 9, 1959; also corrected through Notice to Mariners Number 14, April 4, 1959; with a black line and other assorted dotted pencilled lines along the coast from Dixon Entrance to Chatham Straits.

(Whereupon above-described document was marked Defendant's Exhibit "5" by the reporter.)

Q I'll hand you what has been marked for identification as Defendant's Exhibit "5" and ask you if you can tell me [18] first, is this a chart which is lodged in the Juneau office of the National Marine Fisheries Service?

A Yes, it is.

Q Can you tell me what the origin of this chart was, if you know?

A As I recall, this chart was also prepared for the meetings with the Canadians concerning offshore salmon net fishing.

Q Are these the same meetings you earlier testified to as having taken place in the fall of 1965?

A As I recall; yes.

Q Could you tell me then exactly what this thick black inked line is intended to depict?

A This chart was prepared, again, by Mr. Morgan. The heavy black line should be a replica of the possible three-mile limit as defined on the earlier charts referred to as prepared by Mr. Pearcy.

Q Then this was the line beyond which it would be prohibited to take salmon by nets on the high seas?

A No.

Q Was it intended to be used at all for that purpose?

A I think the intent was to show the difference between high sea salmon net limitations as to a line, between a surf line as applied similarly by the Canadians, and the prohibition on fishing outside a three-mile territorial sea.

Q Is there a surf line depicted on this chart?

[19] A There are some lines on here which are depicted as possible surf lines which the United States could adopt.

Q Let's just get one basic concept clear at this point. What do you refer to by the term surf line?

A The surf line I'm referring to—what the Canadians term a surf line is a line beyond which they do not allow their nations to fish for salmon with nets.

Q Does this have any relationship to the physical location of the surf?

A Judging from the lines that I've seen on the Canadian charts I would say there is very little relationship to the surf. In many cases the lines are quite some distance offshore, far beyond where you would have an active surf.

Q How do you characterize the standards used by the Canadians then in drawing their so-called surf lines?

A I really couldn't characterize how they do them. I don't know what standards they use. I know they have these charts which show this line and they refer to this line as a surf line.

Q Could you describe the various other lines? For instance, there is a solid pencil line on this chart. What is that to depict?

A All of the pencilled lines on this chart—as I understand it, Mr. Morgan was asked to study the surf lines [20] applied by the Canadian Government with particular interest as to how far or how long these lines might be between certain headlands, and then to prepare this chart with a variety of alternative lines which would be in general accordance with the same principals used

by Canada. In other words, the lines would not be any longer than any of the Canadian lines that were used. This then would give us a comparison between a three-mile limit and a number of alternative lines which were similar to the Canadian surf lines.

Q You say that in fact none of these lines actually represent a line setting out the boundary or the line beyond which it is not permitted to fish for salmon with nets; is that correct?

A No, they do not.

Q Has any such line been established as to waters off the coast of Alaska?

A Beyond which they cannot fish for salmon?

Q Yes; with nets.

A No, there has not.

Q I take it, however, such line has been established by the Canadians; is that correct?

A That is my understanding; that a surf line is such a line.

Q Is your office charged with the enforcement of the prohibition against fishing for salmon with nets on the [21] high seas?

A Yes, it is charged with net prohibition on U.S. nationals.

Q What documents, charts, maps, or other criteria do you then rely on in order to determine the areas beyond which a person may not fish for salmon with nets?

A We rely upon the definition of the area in which salmon fishing is permitted as it appears in the Federal Regulations, Part 210, 50 C.F.R.

Q Have those regulations ever been made the subject of any chart, diagram, or memorandum upon which a line might appear?

A Not to my knowledge.

Q So then as to Exhibit "5" the solid black line as you can best recall is the reproduction of Edsell Pearcy's line in this area as set forth on the comparable exhibit in Exhibit "2"?

A Yes.

Q Has any other use been made of Exhibit "5" except as you have testified?

A I did not attend the meeting with the Canadians and I can only presume that this chart and some others similar to it were taken to the meeting and were probably the subject of discussion.

MR. CHARNEY: I object on the basis of hearsay.

Q —with the Canadians?

[22] A I don't know if they were presented to the Canadians or not.

* * * *

MR. CRANSTON: I would like to have marked as Defendant's Exhibit "6" to this deposition Chart 8152, Coast and Geodetic Survey, Sixth Edition, March 29, 1965; corrected through Notice to Mariners No. 5, January 29, 1966; the chart containing an orange line and assorted inked and pencilled lines from Dixon Entrance to Chatham Strait.

(Whereupon the above described document was marked Defendant's Exhibit "6" by the reporter.)

Q Mr. Naab, I will hand you what has been marked as Defendant's Exhibit "6" and ask you if this exhibit is lodged with the Juneau office of the National Marine Fisheries Service.

A Yes, it is.

Q Can you describe the origin of this exhibit?

[23] A This is one of the charts I just referred to a moment ago as being similar to Defendant's Exhibit "5". Its origin, again, as I understand it, was for use at the meeting with the Canadians concerning offshore net fishing for salmon.

Q Is this the same meeting to which you have referred, the fall of 1965 meeting?

A Yes.

Q Did Mr. Morgan also prepare this chart?

A Yes, he did.

Q The solid orange line is intended to depict what?

A The solid orange line depicts the three-mile limit as shown on the Pearcy charts which were referred to earlier.

Q What is the blackened area intended to show, if you know?

A The shaded areas on this chart lying west of Noyes Island and west of Baker Island are intended to show the areas of U.S. salmon net fishing.

Q Is all of this area—according to this chart then it is within the three-mile limit as delineated by Mr. Pearcy on his charts; is that right?

A That's as it appears here, yes.

Q The solid orange line is intended to be an exact replica of the line drawn by Mr. Pearcy and the comparable area on Exhibit "2"?

A Yes.

Q What are the other lines, the pencilled lines, intended [24] to represent?

A As in the previous chart, the pencilled lines represent some possible lines drawn on the same general principals as the Canadian surf line.

Q Was this chart, if you know, ever presented to the Canadians?

A I do not know.

Q When you talk about net fishing as indicated by the darkened areas on the chart what type of net fishing are you speaknig of?

A I think it's primarily seine boats.

MR. CRANSTON: I would like marked as Defendant's Exhibit "7" Coast and Geodetic Survey Chart 8152, Sixth Edition, March 29, 1965, together with a stapled typewritten statement indicating that, "This is a composite chart showing territorial waters from Chart No. 2 and surf line Southeast Alaska from Chart No. 3, solid black line represents territorial waters, dotted black line represents surf line. This chart is corrected through Notice to Mariners No. 16 dated April 17, 1965."

(Whereupon above described chart was duly marked Defendant's Exhibit "7" by the reporter.)

Q Mr. Naab, I'll hnad you Defendant's Exhibit "7" and ask you [25] if this is lodged within the files of the National Marine Fisheries Service in Juneau.

A Yes, it is.

Q Would you describe the origin of this exhibit?

A I believe this chart was also prepared for use at the meeting with the Canadians in the fall of '65 concerning offshore salmon net fishing.

Q Was this also prepared by Mr. Morgan?

A Yes, it was.

Q What does the landward solid black line on this chart indicate?

A It would appear that this is closure lines across the bays.

Q Do you know what standards were used in order to draw that landward black line on this chart?

A On this chart I am sure Mr. Morgan copied the similar lines that appeared on Mr. Pearcy's charts.

Q By that you refer to the comparable chart in Exhibit "2"?

A Yes.

Q What is the seaward black line intended to indicate?

A This would be the extent of the three-mile limit.

Q Is that also based on Mr. Pearcy's depiction of the three-mile limit on Exhibit "2"?

A It should be.

Q What do the darkened areas, cross-hatched areas indicate?

A The shaded areas on this chart are the same as the ones [26] on previous charts. They indicate the area of current U. S. net fishing off Noyes Island and Baker Island.

Q There's a dashed line on this chart in black. What does that indicate?

A This would represent a possible line drawn on the same principals as the Canadian surf line.

Q Again, do you know if this chart was ever presented to the Canadians at this meeting?

A No, I do not.

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MR. CRANSTON: I would like marked as Defendant's Exhibit 8-A through 8-F a series of charts, each a separate exhibit. For instance, Exhibit 8-A consists of a base map on the U. S. Coast and Geodetic Survey

series together with an overlay, each of the overlays containing the notation, "Proposed baseline from which to measure three-mile limit for fishery regulations." 8-A would be an overlay for U. S. Coast and Geodetic Survey Chart 8002 dated June, 1936, Seventh Edition. 8-B is an overlay stating, "Proposed baseline from which to measure three-mile limit for fishery regulations," an overlay for U. S. Coast and Geodetic Survey Chart 8502, dated August, 1944, [27] Eleventh Edition. 8-C containing an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 8802, and that chart being the Eighteenth Edition, December, 1952. 8-D being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 9302, Seventeenth Edition, December, 1952. 8-E being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 9102, the Eleventh Edition, dated October, 1951. 8-F being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 1400, that chart being the Sixth Edition, dated May, 1947.

The overlays on each chart will be indicated by the single exhibit number: for instance, 8-A. The base chart of the U. S. Coast and Geodetic Survey shall be indicated on each exhibit; for instance, by Exhibit 8-A Prime.

(Whereupon the above described documents were market [28] Defendant's Exhibits "8-A" through "8-F" by the reporter.)

Q Mr. Naab, I will hand you what has been marked in the aggregate as Defendant's Exhibit "8-A" through "8-F" and ask you if these overlays and the underlying U. S. Coast and Geodetic Survey charts are lodged with the files of the Juneau office of the National Marine Fisheries Service.

A Yes, they are.

Q What do you know concerning the origin of these charts?

A Everything I know about these charts is what has been told me by others. I was not in the Juneau office here at the time these were prepared.

Q Let me ask some basic questions here. First, do these charts which we have before us, marked in the aggregate as Defendant's Exhibit 8, represent the originals of these charts?

A As far as I know they do, yes.

Q Are there any other copies of these which are located elsewhere so far as you know?

A Not to my knowledge.

Q Before you tell me anything more about them, from whom have you received your information concerning these charts?

A From Mr. Clay Scudder, who was my predecessor in this job.

Q With regard to him, when did you receive this information?

A It would have had to have been sometime in early '61 because he retired, as I recall, in the latter part of 1961.

[29] Q From whom else have you received information concerning these?

A Mr. Rietze and I have discussed these charts, and I have seen information concerning these charts in our files.

Q With respect to that information, have you brought the information you've just discussed with you to this deposition?

A Yes, we have it here.

Q Could you find it for me in any of this material?

(OFF THE RECORD)

Q Mr. Naab, have you found the information regarding Exhibit "8-A" through "8-F" which you've described?

A Yes, I have here copies of the information which I mentioned.

MR. CRANSTON: I would like a series of memoranda consisting of the following documents marked as Defendant's Exhibit "9". The documents are as follows:

Memorandum dated March 29, 1957, to the Administrator, Alaska Commercial Fisheries, from the Assistant Administrator for Staff Coordination, Alaska Commercial Fisheries; subject: Report on Attendance at International Conference February 27 and 28, 1957—Seattle, Washington. That memorandum consists of two pages.

A second memorandum dated June 11, 1957, to the Director, Bureau of Commercial Fisheries, [30] Washington, from Acting Administrator, Alaska Commercial Fisheries, Juneau; Subject: Offshore fishing—Alaska, consisting of three pages.

A memorandum dated October 30, 1958, to the Regional Director, Bureau of Commercial Fisheries, Juneau, from Chief, Branch of Alaska Fisheries; Subject: Alaska North Pacific offshore fishing boundary; that memorandum consisting of two pages.

A letter from M. Cadieux, for the Under-Secretary of State for External Affairs, Department of External Affairs, Canada, to a Mr. Thompson, Minister, United States Embassy, that letter dated October 7, 1958, consisting of one page.

A memorandum to the Director, BCF, Washington, D. C., Attention, Chief, Branch of Alaska Fisheries, from the Regional Director, BCF, Juneau; Subject: Alaska North Pacific offshore fishing boundary, dated November 3, 1958.

A memorandum dated November 12, 1958, to the Regional Director, Bureau of Commercial Fisheries, Juneau, from Chief, Branch of Alaska Fisheries; Subject: Alaska North Pacific Offshore Fishing Boundary; that memorandum consisting of two pages, apparently with some attachments. Let me ask you with regard to this memorandum, Mr. Naab.

[31] I will hand you this letter and ask you to look at it and describe it. It describes other documents.

(Above-described letter examined by the witness.)

A I do not recall seeing these attachments in our files.

Q So, so far as you are able to testify now these attachments described in the memorandum we've just been discussing are not in your files?

A Not that I know of.

Q Would you know what files of the United States Government they might be in?

A No, I don't.

Q I also notice that the memorandum to the Administrator, Alaska Commercial Fisheries, from the Assistant Administrator for Staff Coordination dated March 29, 1957 (that was written by John T. Gharrett) contains some attachments. The letter contains a paragraph as follows. It is a report on attendance at an international conference on February 27 and 28, 1957 at Seattle. John Gharrett states: "The meeting was held in Seattle at the laboratory of the Washington State Fisheries Department. I attended as a member of the United States delegation to discuss the control of offshore fishing, primarily salmon net fishing, with representatives of the states of California, Oregon and Washington and the Canadian Government. Those present and subjects under discussion are set forth in [32] the attachments to this memo, some of which are confidential." I'll hand you a copy of that memo and ask you if the attachments described which are not with this exhibit are in your office.

A I have not seen those attachments to my knowledge.

Q Could they be in your files?

A I don't believe they are in the files maintained by my office, no.

Q Or any portion of the Juneau office of the National Marine Fisheries Service?

A The only other possibility would be the files that are maintained by the Regional Director.

Q And this would be Mr. Rietze; is that correct?

A Mr. Rietze; correct.

Q Would you know what other agency or office of the Federal Government, including National Marine Fisheries Service, might have those documents?

A No.

MR. CRANSTON: I would like to have again a short recess in order to have time to look over this exhibit.

(Whereupon the above-described group of documents was marked Defendant's Exhibit "9" by the reporter.)

(10-MINUTE RECESS)

Q Mr. Naab, I'll hand you what has been marked for identification [33] as Defendant's Exhibit "9", consisting of a series of letters and memoranda I've described. Is this the series of correspondence to which you referred as forming the background for the charts depicted in Exhibit "8-A" through "8-F"?

A Yes, this is the material I have seen in our files.

Q Do you know who prepared these charts?

A Again, I have been told they were prepared by—at least it involved Mr. Gharrett, who was the Regional Director at the time, and Mr. Scudder, whom I mentioned previously.

Q Do you know the role that either of them, or have you been told the role that either or each of them played in the preparation of these charts?

MR. CHARNEY: I gather we're going to be continuing on this questioning. That would be all hearsay, and I'll make a general objection to it.

A I don't know what role each of them played.

Q Have you received any information regarding specifically what Mr. Gharrett did?

A No.

Q Or what his responsibility was?

A No.

Q Have you received any information or do you know otherwise what Mr. Scudder did or what his responsibility was?

[34] A From my conversations with Mr. Scudder I got the impression that he had the major role in actually drawing the lines.

Q In other words he physically, to the best of your knowledge, placed the line on the chart?

A I would say so from his conversation.

Q Did Mr. Scudder tell you the criteria he followed in placing the lines on these charts depicted in Exhibit "8-A" through "8-F"?

A He told me the purpose of the proposed line was to allow the continuance of existing United States salmon fisheries in the areas that they currently existed and to prevent the development of new high seas or offshore salmon net fisheries.

Q Then this line, so far as you understood, was related to the problem of fishing with nets for salmon on the high seas?

A Yes.

Q And was it your understanding that this chart marked a baseline from which a three-mile limit would be measured beyond which it would be prohibited to fish for salmon with nets?

A That would be my interpretation of the conversations and also the notation that appears on each of the overlays.

Q Is there any other knowledge you have concerning Mr. Scudder's role in drawing these maps other than what [35] you have testified?

A Not that I know of.

* * * *

Q Just to get one other thing straight, the only other notation that appears on any of these overlays is the one on exhibit "8-B". It contains the notation, "DWC 4/8/71". What does that indicate, if you know?

A Earlier this year Mr. Cheek from your office was in our office researching this case and these charts were made available to him, and Mr. Cheek copied several of them. I suppose that's his notation that he has copied them.

* * * *

[36] Q Did you have anything to do with National Marine Fisheries Service, or Bureau of Commercial Fisheries, or any other Fish and Wildlife Service organization during the period of time here relevant; that is, the 1957 period?

A Yes. I was with the Bureau of Commercial Fisheries from May of 1957 to September of 1959, working as a Fisheries Management Biologist in Cook Inlet. I had no duties relative to this study or those meetings.

Q Did you consult at all with Mr. Scudder at all or anyone else concerning these charts?

[37] A No, I did not see them until I arrived here in Juneau in '61.

* * * *

[38] Q Just from a physical standpoint then, there are files located in your particular office complex and then in some other room or rooms of this particular office of National Marine Fisheries Service there are other files; is that correct?

A Yes. Most of the offices here maintain their own files on their own discipline. In addition, the Regional [39] Director's Office maintains files on not only its own discipline but also on some other related subjects, and again at this particular time in 1957 there was not an enforcement and surveillance program as such and, therefore, any files of that particular time were maintained by the Regional Director's Office.

Q So these letters then in this exhibit apparently are under the custody and control of Mr. Rietze; is that correct?

A If they are in our files I would assume that they would be in Mr. Rietze, the Regional Director's, office.

MR. CRANSTON: I would like to have marked as Defendant's Exhibit "10" a copy of a document entitled, "Conference on Co-ordination of Fisheries Regulations between Canada and the United States, Summary of Proceedings, February 27-28, 1957."

I'll hand a copy of that to counsel for the United States.

(Whereupon above-described document was marked Defendant's Exhibit "10" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked for identification as Defendant's Exhibit "10", and I would refer you to page 7 of this exhibit wherein it states under sub-paragraph 4: "In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in [40] some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;".

Do you know whether the charts described in Defendant's Exhibit "8-A" to "8-F" are the charts referred to in sub-paragraph 4 on page 7 on Exhibit "10"?

A I don't know.

Q Again, do you know who in this office or who previously served in this office would know?

A I presume it would have to be someone who attended this meeting.

Q That would be Mr. Gharrett and Mr. Baltzo?

A Again, I am not sure. I would presume it would have been Mr. Gharrett, Mr. Baltzo or Mr. Scudder.

Q Or Mr. Scudder?

A Yes.

Q MR. CRANSTON: I would like to have marked as Defendant's Exhibit "11" a document entitled, "Conference on Co-ordination of Fisheries Regulations Between Canada and the United States, Summary of Proceedings, Vancouver, B.C.—April 21-24, 1959", and I will hand a copy of that to Mr. Charney. [41] (Whereupon the above-described document was marked Defendant's Exhibit "11" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked Defendant's Exhibit "11" and refer you to the bottom of page 8 wherein it is stated: "It was Canada's understanding at the Seattle Conference that when the chart showing the definitive line for Alaska had been received and reviewed we would have an opportunity, as outlined in Major Agreement No. 5 of the Seattle Conference, to meet again and propose necessary adjustments of the lines as was the procedure followed at the Seattle Conference in considering the location of the lines in all other areas.

"The chart requested by Canada at the Seattle Conference was received from the United States some eight months after the Conference. The chart was examined and Canada is still of the view that the Alaska line is not definitive."

Do you know whether the charts described in the portion of this exhibit I've just quoted are the charts which form Exhibits "8-A" through "8-F"?

A No, I do not.

Q Do you know if the charts in Exhibits "8-A" through "8-F" are those same charts as discussed by the Under Secretary of State for External Affairs in his letter in Exhibit "9"?

[42] A I would have to look at the letter.

(Above-described document examined by the witness.)

A No, I don't know if these Exhibit "8's" are the same as those charts.

* * * *

Q Does the National Marine Fisheries Service now—you have [43] testified that it is the policy to prohibit fishing for salmon with nets on the high seas; is that correct?

A Yes.

Q Does the area of enforcement of this regulation or prohibition required by that regulation vary in any degree from the line depicted on the charts in Exhibit "8-A" through "8-F"?

A The lines as defined in the regulations that were charged and enforced are subject to various interpretations. One possible interpretation could perhaps duplicate the lines as shown here.

Q Do you know in any particular instance where your current enforcement differs from the baseline and three-mile limit as depicted on these charts?

A No.

Q Then you know of no instance where it differs?

A No.

Q Is the line which is depicted on the charts in Exhibit "8-A" through "8-F" generally the line known as the Gharrett-Scudder line?

A That's what I have heard this referred to, yes.

Q Who has referred to it as this?

A Mr. Scudder, I think, said that he and Mr. Gharrett had prepared it. Again I can't recall specific names, but everybody who had ever seen this line referred to it as the [44] Gharrett-Scudder Line, and I presumed they had a major role in preparing it.

* * * *

[46] MR. CRANSTON: I would like marked as Defendant's Exhibit "13" a memorandum dated September 22, 1969, from Fisheries Management Supervisor, BCF, Juneau, to Chief, Office of International Organizations and Agreements, BCF, Washington, D. C.

(Whereupon the above-described document was marked Defendant's Exhibit "13" by the reporter.)

Q Mr. Naab, I will hand you what has been marked as Defendant's Exhibit "13" and ask you if you recognize this memorandum.

A Yes, I do.

Q At the present time does the National Marine Fisheries Service permit American fishermen to intercept salmon more than three miles from the shoreline of Bristol Bay?

A I would have to consult the Alaska Department of Fish and Game Regulations and look at their fishing district boundaries.

Q By that statement do you imply that the Federal Government [47] or any of its agencies such as the Coast Guard or the National Marine Fisheries Service have no authority over or with respect to the prohibition of the salmon net fisheries on the high seas?

A No. In 1970 the regulations governing offshore salmon fishing, Federal Regulations, were modified so that the areas which were exempted, or in other words the areas in which U.S. nationals could fish, were changed to coincide to those areas in which the State of Alaska allows net fishing. In other words, the Federal boundaries are now tied to the State of Alaska fishing district boundaries.

Q So if the State of Alaska should permit, for instance, a non-resident of the State of Alaska to fish more than three miles from the shore in Bristol Bay then the National Marine Fisheries Service would also permit that?

A Yes, if he was permitted under state regulations.

Q With regard to this last clause in this sentence, "If, as was mentioned during the Seattle meetings, it was

decided to permit U.S. fishermen to intercept salmon out to 12 miles offshore, I believe this regulation," (and you're referring to regulation in 50 C.F.R.) "would be prohibitive and would require revision." Has that regulation then been revised?

A Yes, it was revised last year.

Q And you say it was revised in order to correspond with [48] State of Alaska regulations?

A Yes.

Q Was there any particular wording, if you can remember, in 50 C.F.R.—

MR. CRANSTON: We may as well mark as Exhibit "14" a copy of Part 210 of 50 C.F.R. together with an excerpt from Chapter 36, the April 1971 Regulations, Alaska Department of Fish and Game.

(Whereupon the above described documents were marked Defendant's Exhibit "14" by the reporter.)

Q I'll hand you Exhibit "14" and ask you if you can tell me, if you are able, what the present language of Part 210 is and how it was changed from the existing regulation?

A Well, this is the existing regulation now.

Q How does it differ from what may have been an earlier regulation, if you know?

A The primary difference is in paragraph (b) of 210.1 in which it notes that the exclusive waters adjacent to Alaska shall be those in which salmon net fishing is permitted under State of Alaska regulations. The previous version was there was no such definition of the exclusive waters adjacent to the state.

Q Then the State of Alaska regulations as you understand them use essentially the same description as the exclusive waters of Alaska as sub-paragraph (a), do they not, as [49] extending three miles seaward of the coast, and so on and so forth?

A Yes, I think the definition is almost identical.

Q With regard to Cook Inlet, does the National Marine Fisheries Service permit the taking of salmon with nets in any area of Cook Inlet north of Cape Douglas and west of Point Gore?

A Yes.

Q You state that it does this because the State of Alaska would permit its citizens to do this?

A The State of Alaska regulations allow this net fishery in certain areas of Cook Inlet and because they do, then, of course, it is not a prohibition under Federal Law.

Q In other words, would the State of Alaska Government, for instance, permit non-residents of the State of Alaska to take salmon with nets in any area of Cook Inlet north of Cape Douglas and west of Point Gore?

A You said would the Federal Government allow non-residents?

Q Non-residents of the State of Alaska.

A Yes.

Q In that you state your authority is what? What particular laws or regulations do you rely on?

A Part 210, 50 C.F.R.

Q With regard to other activities of the Alaska Department of Fish and Game in Cook Inlet, do you know whether or not [50] the Alaska Department of Fish and Game manages any fishery resource in Cook Inlet, any part of Cook Inlet north of Cape Douglas and west of Point Gore?

A Yes, I'm sure they do.

Q Are you aware of any particular fishery which is managed?

A Salmon, king crab, possibly shrimp.

Q Are you aware or do you know of any degree or any methods by which the Alaska Department of Fish and Game uses to manage these resources?

A They establish seasons, they establish lawful gear types, probably establish minimum size limit, limits on sex in the case of crabs, open fishing periods, closed fishing areas.

Q Is there a crab fishery that you are aware of in Cook Inlet?

A Yes, there's a crab fishery in Kachemak Bay and possibly also in Kamishak Bay.

Q Is there a crab fishery of which you are aware which exists more than three miles from the shoreline of Cook Inlet?

A From my own knowledge, when I was up there in 1957 to 1959 there was a crab fishery in Kachemak Bay, which would have occurred more than three miles offshore, yes.

Q Do you know at the present time whether the Alaska Department of Fish and Game manages that crab fishery?

A Yes, they do.

Q And you state they do this by placing closed seasons, [51] limits, and so forth on it?

A This is the standard form of management. I'm sure this is what they're doing there also.

Q Do you know whether the Alaska Department of Fish and Game distinguishes between residents and non-residents of Alaska with respect to its management of these fisheries you have just discussed?

A The only thing that occurs to me would be possibly an increased fee for licenses for non-residents.

Q But otherwise do you know whether they would require non-residents to comply with the same restrictions, seasons and bag limits?

A Yes. As residents you mean?

Q Yes.

A Yes, I am sure they do.

Q Have you had correspondence with the Alaska Department of Fish and Game on this, on any areas of management or enforcement of the fisheries in Cook Inlet?

A Nothing specific that I can recall.

Q Does the Alaska Department of Fish and Game send the Juneau Office of National Marine Fisheries Service copies of the annual regulations applicable in Cook Inlet?

A Yes.

Q Are they sent to you?

A Yes, I think they are sent to my office.

[52] Q Do you try to make yourself aware of the content of those regulations?

A Generally not the specifics.

Q In a general way do you make yourself aware of what the Department of Fish and Game is doing with regard to management and enforcement?

A No. We use them primarily for reference in case a question arises, particularly on some of the patrol units if someone asks what the current fishing season is for a certain species in a certain area, we refer to these and we can answer the question. We do not study their enforcement and management techniques closely.

Q But nevertheless you are aware of them?

A Oh, yes, generally.

* * * *

[53] Q I'll hand you what has been marked Defendant's Exhibit "15" and ask if you are at all familiar with the subject matter of these memoranda and letters.

(Above-described exhibits examined by the witness.)

MR. CHARNEY: May I ask where these letters come from?

MR. CRANSTON: These letters came from the files of the Juneau office of the Alaska Department of Fish and Game. I might be able to get further information. Apparently at least one of them came from the United States Government file numbered 886-04. I'm now informed that they were located in the Juneau office of National Marine Fisheries Service.

MR. CHARNEY: I'll make a general objection to these until I have been able to satisfy myself.

A I don't recall seeing any of these documents, offhand.

Q Do you know anything concerning the set of overlays showing baselines defining the waters of Alaska described by John I. Hodges in his memorandum of January 20, 1960?

[54] A No.

Q Do you know anything concerning any maps or charts depicting baselines which were transmitted by the Bureau of Commercial Fisheries to the Alaska Department of Fish and Game?

A No.

Q Have you ever heard of any such maps being transmitted to the Alaska Department of Fish and Game?

A Not that I would know of.

Q I take it then you've never discussed such a transmittal of documents, charts or maps with anyone?

A No.

Q And you've seen no correspondence or any other documents pertaining to such a transmittal?

A Not that I remember, no.

Q Do you know anything relating to the subject matter of these letters set forth in Exhibit "15"?

A No. As I said, this is the first time I recall seeing these documents.

• • • •

Q Mr. Naab, you stated that the regulation involving salmon [55] net fishery in 50 C.F.R. was amended in 1970; is that correct?

A Yes.

Q Prior to 1970 at any time had or has the National Marine Fisheries Service or any of its predecessor agencies prohibited or made any arrests with respect to the use of salmon net gear in any area of Cook Inlet south of the line which is claimed by the Federal Government as the closure line of Cook Inlet?

A None to my knowledge. None while I was in Cook Inlet.

Q Do you know whether or not there was fishing for salmon with nets in any area of Cook Inlet south of the line claimed by the Federal Government as the closure line of Cook Inlet?

A Yes, there was.

Q Was this carried on more than three miles south of that line or south of any shoreline in Cook Inlet?

A Let me look at the chart. Yes, it was more than three miles south of Kalgin Island, south of the closure line.

Q As defined by the Federal Government in this case?

A Yes.

• • • •

[59] MR. CRANSTON: Now the last set of charts which you brought with you. Let's have this document entitled "Territorial Waters and Contiguous Zone Guide, Commander 17th Coast Guard District, Juneau, Alaska", a green booklet with green cover, marked as Defendant's Exhibit "17".

A There is a problem here. These charts and that particular booklet are something I am going to have to retain because we're using it on a day-to-day basis.

MR. CRANSTON: Well, it looks like this booklet, for instance, the green booklet is something that could be capable of Xerox reproduction.

Could we go off the record?

(Off the Record)

MR. CRANSTON: It's been agreed that the Exhibit "17" can be Xerox reproduced here in the office of the National Marine Fisheries Service in Juneau.

(Whereupon above-described document was marked Defendant's Exhibit "17" by the reporter.)

Q I'll hand you Defendant's Exhibit "17" and ask you if this is located in the files of the National Marine Fisheries Service in Juneau.

A Yes, we have several copies of this located in our files.

Q You have brought this pursuant to the Subpoena Duces Tecum?

A Yes.

[60] Q Does this booklet just include the coastline of Alaska or does it include other areas?

A That booklet includes—it is photo reductions of the other charts that are laying here and includes the Alaska coastline from Dixon Entrance to roughly 60 North, or the area in which there is a likelihood of foreign fishing violations of U. S. jurisdiction.

Q By these other charts lying here, you refer to a set of charts prepared on U. S. Coast and Geodetic Survey charts, a group of charts relating to the coastline of Alaska, to the Hawaiian Trust Territories, to—

A The East Coast and the Gulf of Mexico.

Q The East Coast and the Gulf of Mexico. Now with respect to all of these charts, do you know their origin?

A These charts were prepared by an interdepartmental committee composed of members of Federal agencies and were published by the United States within the last few months, and we obtained a copy through our Washington Office.

MR. CRANSTON: Let's just go off the record a minute.

(Off the Record)

MR. CRANSTON: We have here a set of one hundred and fifty-five charts depicting the purported coastline of the United States—

MR. CHARNEY: Objection.

MR. CRANSTON: —each with this wording, "Caution, [60] this document is not for use in navigation. The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate International boundaries and is not to be understood as asserting or implying where they are located."

Q Let me ask you this, Mr. Naab: Did this office (by this I refer to the Juneau Office of the National Marine Fisheries Service) participate in any way in the formulation of the baselines or other lines appearing on this chart?

A No, we did not.

Q Were you consulted in any way concerning this?

A No, we were not.

Q Do you know if any agency of N.O.A. participated in the formulation of these charts?

[62] A I understand that National Marine Fisheries Service in our central office in Washington, D. C. had a participant on this interdepartmental committee.

Q Would you know the name of that participant?

A Denny Moore, Denton Moore.

Q Do you know what his title is?

A I think he's the Assistant Chief of the Enforcement and Surveillance Division, something like that, in Washington, D. C.

Q So far as you know he is still—

A He is still in that position in Washington.

* * * *

[64] CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Naab, can you tell me whether or not Canadians fishing for any fish are permitted to fish in the territorial sea or inland waters of the United States?

A In the territorial sea or what?

Q Inland waters.

A No, they are not.

Q Do you recall any time during your work here that this was not the case; that is, that they were permitted?

MR. CRANSTON: I would enter an objection for the [65] record at this time, that the examination of the witness in this regard is going beyond the scope of the examination of the witness by the State of Alaska.

MR. CHARNEY: I think this was brought out in the previous deposition and I am just continuing along the lines of the direct there.

MR. CRANSTON: I will still register my objection.

A Prior to 1964 there were no laws or regulations concerning general foreign fishing within the territorial sea that carried penalty provisions. There were customs and regulations against it. However, the only penalty that could be imposed was to direct the ships to leave our waters.

Q Were Canadian vessels permitted to fish in our territorial sea?

A No.
Q How about the Halibut Convention?
A The Halibut Convention allows them to fish in Convention waters, which includes both territorial sea and offshore waters. However, the United States has a law that prohibits all other foreign fishing within the territorial sea.
Q Have you ever made a search of the records of the National Marine Fisheries Service and its prior names, Bureau of [66] Commercial Fisheries and Fish and Wildlife Service in Juneau for any records of enforcement against Canadian halibut vessels in Cook Inlet?
A Yes, I have.
Q When was the first such search?
A I guess in late 1966 or '67.
Q What was the result of that search?
A I could find no record of the apprehension of any Canadian vessels.
Q Or any other enforcement action against Canadians?
A Or any other enforcement.
Q Did you recheck this at any future time?
A Yes, it has been checked again since that time.
Q With any different results?
A With the same results.
Q Do you know if Canadians fish in Cook Inlet?
A We have had reports that the Canadians fish halibut in Cook Inlet.
Q Do your responsibilities or have your responsibilities related to the matter of the location of the limits of the territorial sea in Cook Inlet?
A I'm sorry, I don't understand you.
Q Did anything you had to do, enforcement or any other work, while you have been employed by fisheries offices as they have been variously named have anything to do with the [67] limits of the territorial sea of the United States?
A Only so far as enforcing the prohibition against fishing in the territorial sea.
Q In the course of that work did you have to determine, at least generally, where the limit of the territorial sea was in Cook Inlet?
A Yes.

Q Were you ever given instructions as to where it was?
A We were given the charts prepared by Pearcy in 1963 for guidance for enforcement purposes.
Q Based on this guidance what did you take to be the limit of the territorial sea in Cook Inlet?
A Those charts showed the three-mile limit following the sinuosities of the coast until it reaches a closing line extending roughly across the bottom of Kalgin Island.
Q Referring to those Pearcy charts, do you know if they have been published?
A Not to my knowledge.
Q Have they been shown to foreign governments?
A Not that I know of.
Q Have you received written instructions that they were adopted by the United States as its position?
A No, we have not.
Q Based on the closing lines shown on those charts—let's make sure we know what we're talking about—those have been [68] identified as Exhibits "2" with letters after that, A through—I don't know how far they go. Were they the Pearcy maps?
A Yes, those are the ones.
Q Do you know of any time when enforcement action was taken against any vessel based on territorial jurisdiction where that vessel was located more than three miles from the low water line shown on those charts?
A Based on territorial jurisdiction?
Q Yes.
A No.
Q Do you know of any time when enforcement action was taken against any vessel based on the contiguous zone jurisdiction where the ship was more than twelve nautical miles from the low water line?
A No.
Q Do you know of any time when a U. S. officer told any foreign government, master, or vessel, or other foreign entity that we would enforce our territorial jurisdiction laws measured from the closing lines shown on those maps?
A No.

Q Do you know if the Gharrett-Scudder maps identified as Defendant's Exhibit "8-A" through as far as it goes, were published?

A Not to my knowledge.

[69] Q Were you ever ordered to use them for law enforcement?

A No.

Q Were you ever told they represented the U. S. official position on anything?

A No.

Q Did you ever take any enforcement action based on those lines?

A No.

Q Have you ever arrested Canadian vessels for fishing for halibut in the territorial sea of the United States?

A Yes.

Q More than once?

A Three times.

Q Were any of them in Cook Inlet?

A No.

Q Were any of them more than three miles from the low water line?

A No.

Q We have had a bit of discussion about surf lines and extension lines and other lines, and I would like you to explain what this means, especially with respect to other lines such as the territorial sea lines or inland water lines.

MR. CRANSTON: With regard to his explanation of what the territorial sea line means, this is a legal [70] conclusion and I believe that the law itself is sufficient to define what this means, and that the witness is not competent or qualified to render a legal opinion on the matter of what the territorial sea line is.

MR. CHARNEY: You can answer the question.

A Would you phrase the question once more for me?

Q You've referred to the study with respect to the surf lines, Canadian surf lines, with respect to salmon fisheries. There was a Mr. Moore who did some work on that.

A It was Mr. Scudder mainly.

Q No, the surf lines.

A Morgan.

Q Morgan. We've also had discussion of the Scudder lines. There hasn't been a connection to territorial sea and I'm interested as to why not.

MR. CRANSTON: First let me register my objection. Insofar as the witness is going to testify to the legal significance of the term territorial sea I object on the basis he is not qualified to testify.

MR. CHARNEY: Answer.

A The use of various lines is a very common practice in the fisheries management. The Alaska Department of Fish and Game establishes various fishing districts in which [71] there is a variety of regulations imposed. The United States government and other foreign governments have a number of different lines that are used strictly for fisheries management.

The Halibut Convention, for instance, subdivides the halibut fishing areas in the North Pacific from Oregon through the Bering Sea into a number of regulatory areas, each of which has a slightly different catch quota. The International North Pacific Fisheries Convention establishes a line in the Bering Sea and the North Pacific, east of which the Japanese are not allowed to fish for salmon and halibut. The number of the bilateral agreements with Japan and the Soviet Union establish certain closed areas on the high seas well beyond the United States jurisdiction.

The surf lines that were referred to and the Gharrett-Scudder Line was defined merely to prevent the proliferation of salmon fisheries on the high seas which it was felt would be detrimental to the in-shore management of the salmon industry. The use of surf lines is not necessarily a new technique. In my opinion it is done with no reference to the territorial jurisdiction or continuous fishing under foreign jurisdiction.

Q Are you familiar with American fisheries off Canadian shores?

[72] A Somewhat.

Q Can you tell me about them, as much as you know?

A The extent of Alaskan fishing off Canadian shores is less now than it had been in previous years. At one time there used to be a fairly extensive salmon trolling fishery in Canadian waters, Hecate Strait particularly and then some in Dixon Entrance. There used to be considerable American halibut fishing off Canadian waters and there is a sizeable trawl fishing fleet and salmon fishing fleet that operates out of the states of Washington and possibly Oregon, fishing in Queen Charlotte Sound and west of Vancouver Island.

Q Would these fisheries be affected by claims of jurisdiction of the ocean by Canada?

A Certainly.

Q What would happen?

A If Canada claimed jurisdiction over these waters and there was no provision made for continuation of U. S. fisheries in these waters they would be terminated.

Q How can salmon be commercially caught?

A Do you mean the methods employed?

Q Methods?

A One of the most common, of course, is the use of nets, being drift gill nets, set gill nets, and in some cases sunken gill nets. Traps was another form of gear that has [73] been outlawed in the State, salmon seines, beach seines, purse seines, long line, salmon trawling; all of these have been employed at various places as a commercial fishing operation.

Q I'm turning now to Exhibit "2-H". It's a part of the Pearcy set showing Lower Cook Inlet, and I want to understand how you interpret this. I'm looking at Exhibit "3". On these charts lines have been drawn showing the waters which are internal or territorial waters under present baselines drawn by arcs and circles method following the sinuosities of the coast plus a twenty-three mile closure line for bays. Can you identify verbally the line discussed in that passage as you understand it?

A Well, along certain areas of the coast where there are no indentations there appears a single red line offshore, which is three miles offshore. This would be the territorial sea. In certain other types of indentations there appears two red lines, one farther offshore and one in-

shore across two points of land. This would be a twenty-four mile closure line. The three-mile territorial sea would extend three miles from the closure line and the waters behind the closure line, or inshore from that line, would be internal waters.

Q How about the waters outside of the three miles offshore line?

[74] A The waters outside of the three miles offshore line would be considered international waters.

Q Are there such waters shown on this map?

A Yes, there are.

Q Where are they?

A Down the center of the Inlet water area, if you will, all the way from the top of the map to the bottom.

Q The closing lines of the bays are those closing lines such as Port Graham, Kamishak Bay, Chinitna Bay, and crossing Kamishak Bay at the end?

A Yes, those are in the closed area.

Q This memo goes on, "and 2) the waters which would become territorial waters by application of straight baselines (in addition to the 24-mile closing line for bays) following the criteria set out in the Convention on the Territorial Sea . . ." Could you identify the areas that would be territorial waters by application of the straight baselines?

A The possible straight baselines on this chart are shown by green lines, and extending from the green proposed baseline is a second baseline three miles distant from that, and that would be the additional amount of territorial sea that would be included. In some areas between the green line and the inshore red lines there is a green shaded area, and this is the additional amount of area that would become subject to U. S. jurisdiction if they [75] adopted the proposed straight baseline or the baseline system.

Q I see this green shading, one above and below Augustine Island, and another between the mainland and the Barren Islands. Is that green shaded area the area that would be added to the waters of the United States?

A Yes.

Q Would the center of Cook Inlet all become waters of the United States by the system?

A The areas in Cook Inlet which are not shaded green, which you referred to, would not be added to our jurisdiction under this concept.

Q Would Statistical Area 249 be added?

A No, it would not.

Q Would all of Statistical Area 241 be added?

A No.

Q Would all of Statistical Area 248-70 be added?

A A part of it would be added.

MR. CHARNEY: Let's go off the record.

(Off the Record)

MR. CHARNEY: Could you mark this?

(Whereupon document titled "210.1, Title 50—Chapter II, Subchapter B—North Pacific Commercial Fisheries" was marked Plaintiff's Exhibit "1" by the reporter.)

Q Mr. Naab, I show you documents marked Plaintiff's Exhibit "1". [76] Would you identify them?

A Yes. This is a copy of Part 210 of 50 C.F.R., the regulations as they existed before 1970 concerning high sea salmon net fishing, and a copy of the same part of C.F.R. showing the current regulation as it was changed in 1970.

Q Am I correct, that the description prior to 1970 is on top, the first page?

A Yes, the first page is prior to 1970.

Q And the second page is subsequent to 1970?

A Yes.

Q Were you responsible for enforcing the regulations based on this definition at any time?

A Yes.

Q I notice that definition attempted to define an area; is that correct?

A Yes.

Q As you have understood your instructions did that area, the division of one area from another, coincide with the division of the territorial sea from high sea?

MR. CRANSTON: I object at this point. We have referred to instructions and I do not know that there is any testimony on the record concerning any instructions given the witness concerning this regulation.

Q Would you tell me your understanding of this and compare [77] it to your understanding of the territorial sea as you were advised.

MR. CRANSTON: I still object on the basis there is no foundation for any advice.

Q Tell me whatever advice you had.

A We, of course, had asked for guidance from our Washington office as to what constitutes waters adjacent to Alaska as defined in this regulation and we received no firm guidelines. We were told to interpret this as it was written and, of course, it outlines these waters as being those which are three miles seaward from the coast, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, and from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such islands and the mainland. Of course, in looking at this as opposed to the methods which Mr. Pearcy advocated for determining the territorial sea, it was obvious to us this definition was not the same as the territorial sea.

Q Did you interpret it then as something different?

A Yes, as the waters adjacent to Alaska as defined.

Q Do the regulations under this definition apply to persons other than citizens of the United States?

A No.

Q What do the regulations provide?

[78] A That persons or vessels subject to the United States jurisdiction shall not fish for salmon in the North Pacific area outside this area defined as waters adjacent to Alaska.

Q Does it place any restrictions or limitations on what is done inside this area?

A No, it doesn't.

Q Assuming that the line described in this definition is more seaward than the limits of the territorial sea of the United States, do the regulations place any limitation on salmon fishing by Americans in those areas?

A If the waters as defined by this were more seaward of the territorial sea they would still be allowed to fish salmon in that area.

Q Do you know if the United States has ever adopted a system of straight base lines on the coast of Alaska?

A Not to my knowledge.

Q Have you ever received any instructions stating that any body of water on the coast of Alaska was claimed by the United States as historic, inland or territorial waters?

A No.

Q Now turn to the second page of this Plaintiff's Exhibit "1" to this deposition. Do you know anything about this change in the regulations?

A Yes. This change came about primarily at the recommendation of the Alaska Region of N.M.F.S. and also the Alaska [79] Department of Fish and Game.

Q Would you explain?

A The 1970 red salmon run into Bristol Bay was anticipated to be extremely large and there was concern that perhaps the processing facilities located in Bristol Bay would be inadequate to handle the amount of anticipated catches if they were caught in the normal time span; in other words, within a relatively short time. Because of this the State of Alaska wanted to create some additional fishing districts in the lower reaches of the river mouths so that our fishermen would have a longer opportunity to catch these fish. In other words, they could go out into a further area and get a few more days' lead time before the run came in and get them to the cannery earlier.

We looked at this and under our previous definition of waters adjacent to Alaska it appeared to us in view of the relatively flat coast in Bristol Bay that these outer fishing districts would be outside the waters adjacent to Alaska and if the United States or the State of Alaska allowed fishing in there it would be in violation of the North Pacific Fishery Regulations. So at our recommendation the regulations were changed to tie the waters adjacent to Alaska as defined in the Federal Regulations to those districts in which the state allowed fishing in order

to let the Bristol Bay fishermen fish in these outer fishing [80] districts in 1970.

Q What was the location of some of these artificial districts?

A In some cases they were located more than twelve miles offshore.

Q How does Alaska, as far as you know, enforce these regulatory areas, or does it?

A Yes, it does. It uses aircraft patrols and vessel patrols in some areas.

Q Does it seize foreign vessels in these areas?

A It has never to my knowledge.

Q Does it use landing laws or other kinds of laws for enforcing them?

A Well, it does use landing laws plus other types of laws too.

Q Mr. Cranston asked you a question with respect to Exhibit "8"; that's the Scudder maps. The question involved enforcement, whether you had enforced inside the lines or outside the lines. Do you recall that question?

A Yes.

Q Do you recall it anymore than I do? Would you explain to me your answer?

A I recall the question. I interpreted the question as being were there areas in which the United States allowed salmon net fishing offshore; were they all inside the Scudder-Gharrett Line, and my answer was, as I recall it, [81] yes, they were all inside that line.

Q Is your answer necessarily the contraposite of that; that is, that the prohibitions on certain types of salmon fisheries are all applicable outside of that line?

A Yes. Outside of that line the prohibitions would be applicable.

Q Is there any place inside that line where the prohibitions are applicable?

A Yes, there are areas inside that line where it is also prohibited.

Q So the line on those maps, Exhibit "8", is not the dividing line?

A No, that line has no relationship to where we feel they do not enforce salmon net fishing.

Q I think in answering that question you spoke of boundary lines. What do you mean by that?

A Boundary lines?

Q I think I remember that term. No, as a matter of fact it was with respect to the Alaska fisheries.

A Fishing district boundary lines?

Q Yes. What do you mean by boundary lines in that sense?

A They establish in most of the fishing districts, at least in Bristol Bay area. Each river system, its lower part and tributaries divided into a number of fishing districts, has certain restrictions on fishing time and perhaps on catch [82] quotas. These are merely regulatory divisions of the fishing areas to control the fisheries.

Q Mr. Cranston showed you Deposition Exhibit "12" referring to the Coast Guard maps that you saw.

A Yes.

Q You said the maps showed a three-mile limit in Cook Inlet.

A Yes, it did.

Q Did it follow the sinuosities of the coast up the Inlet to Kalgin Island to measure the three-mile limit or was the three-mile limit measured from a closing line below or at Cape Elizabeth or Cape Douglas?

A The three-mile limit followed the sinuosities of the coast up to the same identical closing line as North Kalgin Island.

Q Does the National Marine Fisheries Service office in Juneau and what it was prior to being called that, B.C.F. and all other names, do you know if it has been given authority to determine the limits of the territorial sea of the United States for Alaska?

A No.

Q Or conduct the foreign relations of the United States with respect to the limits of the sovereignty of the United States?

A No.

Q If you said that someone in this office, talking about the [83] Regional Office, maintained the territorial sea of the United States was some place off the coast of Alaska, is that subject to your review?

A I don't understand the question.

Q If you arrested a foreign vessel off of Alaska and the question arose as to whether it was or was not within the territorial sea of the United States or the contiguous zone, who would have the final word, this office here or the main office in Washington, the State Department?

A When we get what appears to be a violation of the territorial sea we, of course, are guided by the charts now provided by the Interdepartmental Committee. But in addition, the distance offshore in a precise position is relayed by the Coast Guard to their Headquarters in Washington, D. C. and I'm confident that if they had reason to believe this was not within the territorial sea (by "they" I mean Coast Guard Headquarters in Washington, D. C. and whoever else they consult) that we would be instructed not to seize this foreign vessel.

Q How long has this been in effect?

A Ever since I've been here; for ten years.

MR. CHARNEY: We can go off the record.

(OFF THE RECORD)

MR. CHARNEY: We have stipulated and I'll give Alaska the right if they want to come in with affirmative [84] evidence at any time that this stipulation is wrong, they have the right, but to the extent that we have sustained the burden of proof, that the maps that were referred to by Mr. Cranston as containing one hundred and fifty-five maps and with a statement on it beginning, "Caution, This Document is not for use in Navigation. The lines drawn on this document delimit provisionally . . ." and so forth. Contained within these 155 maps in the custody of the National Marine Fisheries Service in Juneau is one document of Cook Inlet based on Chart 8553, Eleventh Edition, January 17, 1970, corrected through Notice to Mariners 3/70, showing the northern part of Cook Inlet and around Kalgin Island; and another page based on Chart 8554, Eleventh Edition, April 18, 1970, corrected through Notice to Mariners 16/70 showing Lower Cook Inlet with a coastline, a three-mile line and a twelve-mile line shown on it.

We have stipulated that these two documents are the same as the documents contained in United States Exhibit "73" that was submitted to the State and filed in the Court about a week or two ago. Is that correct, Mr. Cranston?

MR. CRANSTON: It is my understanding, yes, that [85] these are the same; Exhibit "73" and the two maps to which you referrerd are the same.

Q Mr. Naab, these 155 maps, do you know if they are for sale?

A Yes, they are.

Q Published?

A Yes.

Q Where can they be purchased?

A National Ocean Survey, Washington, D. C.

Q Let's look at Defendant's Exhibit "17", which is that green book entitled, "Territorial Waters and Contiguous Zone Guide, Commander, Seventeenth Coast Guard District, Juneau, Alaska". I show you page thirteen. Could you tell me what this is?

A That's a photo reduction of the chart of the Southern Part of Cook Inlet which you previously referred to.

Q This is a reduction of the chart contained in the set of 155 maps that we have been discussing and stipulated concerning?

A Yes. That is a photo reduction of the same maps.

* * * *

[87] Q This Exhibit "17", who has copies of it?

A This was produced by the Seventeenth Coast Guard District. We were given a few copies for use by our enforcement agents. The rest of them have been distributed to the Coast Guard fisheries patrol units for their guidance and enforcement.

Q Patrol units; does that mean ships?

A Ships and aircraft.

Q Every ship and aircraft in the Seventeenth Coast Guard District has one of these?

A Every one on fisheries patrol, yes.

Q Prior to this issuance do you know of any other maps that were given as distribution?

[88] A I know of no such maps indicating either territorial sea or contiguous zone.

Q Aside from these exhibits, "17" and the set of 155 maps, let's talk about all of the other maps which have been produced by the State showing lines off of Alaska. In enforcement activities do you know if any of them were shown to foreign vessels?

A No, none of them were shown to any foreign nationals concerning fisheries. As you know, some of the surf lines and the Scudder-Gharrett lines may have been shown to the Canadian officials.

Q Now let's turn to deposition Exhibit "17". Do you know if that was ever shown in the course of enforcement activities?

A Yes, I am sure it was.

Q Can you name an incident?

A A few weeks ago a U. S. halibut boat reported a Canadian halibut vessel fishing in Lower Chatham Strait inside what the U. S. fisherman took to be a closure line across Lower Chatham Strait, in which case the Canadian would have been inside U. S. territorial waters. The Coast Guard launched an aircraft to investigate and a Coast Guard Cutter with one of our enforcement agents aboard responded. They found the Canadian fishing vessel in Lower Chatham Strait fishing well outside three miles but [89] inside twelve miles, and based upon the documents that you've referred to they boarded the Canadian vessel and pointed out to him the limits of U. S. jurisdiction as depicted in those two documents. They also boarded the U. S. vessel and pointed out to him the limits of jurisdiction in Lower Chatham Strait.

Q This deposition Exhibit "17" contains a number of maps. Are each of them copies, at a reduced scale, of whatever appropriate larger scale map is shown in the set of 155 that's published by the U. S. Coast and Geodetic Survey?

A Yes, they're all photo reductions of some of those 155 charts.

* * * *

Q Do you know anything about the Coast Guard enforcement of laws in Cook Inlet based on the limits of the territorial [90] sea?

A Well, I know that the Coast Guard, which we conduct joint fisheries patrols with, are guided by the same lines and limits that we follow.

Q You're on the ships with them?

A Yes.

* * * *

REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

[95] Q You have testified concerning what constitutes waters adjacent to Alaska, particularly as that term is used in 50 C.F.R., part 210. I believe that you testified that you were told to interpret this section as it was written; is that correct?

A Yes.

[96] Q Do you have any memorandum or other written document or instruction of any kind indicating that this section in its definition of the waters of Alaska is to be interpreted or treated differently than the definition of the territorial sea of Alaska?

A No, not to my knowledge.

Q Have you had any conversation or any oral instruction from anyone superior to you telling you that this section is to be interpreted differently from the interpretation you would give to the territorial sea of Alaska?

A I have discussed this point, probably in the early '60's, with our Regional Solicitor, legal advisor, Department of Interior in Anchorage, and I had interpreted the section myself and through my supervisor, Mr. Rietze, in my interpretation, and the Regional Solicitor concurred with me that this definition was different than what we had construed to be the definition of the territorial sea.

* * * *

[97] Q Is that three-mile concept generally a concept, in your opinion, which is inherent and applicable to the concept of the territorial sea?

A Yes.

Q Do you know of any other instances where that concept is applied?

A The three-mile territorial sea?

Q Of a three-mile limit measured from something?

A Do you mean as a measurement of something other than the territorial sea?

Q Yes.

A The adjacent waters of Alaska is another use of a three-mile limit.

Q What would the significance of a three-mile measurement with respect to waters of Alaska—how would that differ in significance, or necessity or need from the concept [98] of a three-mile limit measuring the territorial sea?

A For instance, if you use the concept of the three-mile measurement as defined under waters of Alaska it would seem to imply that Shelikof Strait would be included in waters adjacent to Alaska. All of the Alexander Archipelago would be included as waters adjacent to Alaska. If you really wanted to stretch the definition, the waters between any offshore island and the mainland would be waters adjacent to Alaska. Cheericoff Island sits perhaps sixty miles offshore. All the waters between it and the Alaska Peninsula would be waters of Alaska, the waters adjacent to it. Under that liberal interpretation of this thing I certainly would never believe this was the same definition as the territorial sea.

Q What in this definition of the waters adjacent to Alaska which uses the term "three miles seaward from the coast, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances and from any island or groups of islands," what is there necessarily about the three-mile term itself that would include Shelikof Strait within that definition?

A If you categorize Shelikof Strait as including all straits and not just passages.

Q All right, but that is the word "strait". Is there anything which the use of the term three-miles seaward adds [99] to that definition so far as it applies to the

waters of Alaska other than three miles itself as a geographic fact?

A I'm not sure I understand what you're trying to get from me.

Q In other words, do we need the three-mile addition in this definition in order to make Shelikof Strait part of the waters of Alaska as you would interpret this?

A No.

Q So my question is, what significance does the three-mile definition as it applies to the waters of Alaska add?

A It would add a three-mile belt on the outside of the offshore islands and on the outside of the line between headland and headland, and on the outside of the waters of the Alexander Archipelago.

Q Does not a three-mile limit of territorial sea also add three miles to islands even if they are offshore islands?

A Yes, but it does not necessarily include the waters between those islands and the mainland, as that definition could.

Q I'm trying to point out that that part of the definition arises from the fact that it includes headland to headland across all bays, inlets and passes, and does not depend on the existence of adding three miles.

A No.

* * * *

[101] Q Do you have a copy of Part 210 in front of you?

A Yes.

Q With respect to enforcement of this regulation and specifically with regard to activities of salmon net fishing within Cook Inlet, where does the National Marine Fisheries Service consider the line within Cook Inlet where, under this regulation, net fishing would be permitted?

A It would be within the same jurisdictions in which the State of Alaska currently allows salmon net fishing.

Q First of all, which one of the tests would you apply, or are applied with regard to Cook Inlet? In other words, does the National Marine Fisheries Service consider that the line is drawn three miles seaward from the coast or

as set forth in sub-paragraph (1), or within three miles [102] seaward from lines extending from headland to headland across the inlets?

A I think in this particular case we would use paragraph (b), stating that the waters in which the State allows net fishing are included as those accepted waters.

Q Generally, where in Cook Inlet are those waters?

A Unless the regulations have been changed recently, drift gill netting, for instance, is allowed roughly from the latitude of the Forelands down to roughly the latitude of Anchor Point.

Q Where is seining permitted?

A Seining is permitted—I would have to go to the regulations to find out the districts—but generally it's further down the Inlet along the inshore areas both on the west and east sides.

Q Is it limited to within areas three miles from shore?

A I would doubt that it reads that way.

* * * *

[103] RECROSS EXAMINATION

BY MR. CHARNEY:

* * * *

Q Were you ever instructed that 50 C.F.R. 210 in the present or past form describes the territorial sea of the United States?

A No.

Q Have foreign vessels fished within the waters adjacent to Alaska as defined in those provisions as you would [104] variously interpret it?

A It would depend on who is interpreting that particular definition. Certainly if you use some extremely liberal headland to headland concept on between islands and the mainland, it is conceivable that foreign vessels have been in that area.

Q Have they fished in Shelikof Strait?

A Yes.

Q Did you study the documents relating to the Scudder-Gharrett Line that you handed to Mr. Cranston today?

A Yes, I've been through them.

Q Your opinions as to their not being necessarily territorial sea lines or interpretations of what the proposed territorial sea could be, can you find any support for that in any of these documents?

A Yes. There were some statements in the correspondence relating to those lines that said that they were not intended to affect the territorial sea.

Q Can you point to that?

A In Defendant's Exhibit "9", the June 11, 1957, memorandum to the Director of the Bureau of Commercial Fisheries from the Acting Administrator, Alaska Commercial Fisheries, Juneau, item (1) under the first paragraph on the first page says: "They do not represent the outer limits of territorial waters but are only the base from which outer [105] limits are determined."

Q Point to number five. Would you read that?

A Number five says: "In drawing base lines, interpretation of international waters was not a primary concern."

* * * *

REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

Q Have you in the set of 155 documents considered the words, "The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States", and have you also considered [106] the words, "This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located"? Do you regard these 155 documents as provisional?

A I regard them as being the current United States policy which, of course, is always subject to change. If

a different policy on the part of the United States should be adopted, undoubtedly, these lines would be changed.

* * * *

[3] THOMAS M. ODALE, called as a witness by and on behalf of the Defendant herein. pursuant to the Provisions of the Code of Civil Procedure of the State of California, after being first duly sworn by the Notary Public to testify to the truth, the whole truth and nothing but the truth, deposed and testified as follows:

EXAMINATION UNDER THE STATUTES

BY MR. CRANSTON:

Q Mr. Odale, would you state your name, please.

A Thomas M. Odale.

Q And you live here in Yucca Valley, California; is that right?

A Yes.

Q Do you have a post office box?

A Yes, 77.

Q Post Office Box 77, Yucca Valley?

A Yes.

Q In all of these depositions, we have to get the age of the person that we are talking to. Can you tell me how old you are?

A Either 89 or 90. They ain't sure. During World War I I wanted to take one of those sub chasers, and I was one year too old, so I set it back a year. They get me on that every time.

Q Now, did you ever live in the Cook Inlet area of Alaska?

A I did.

[4] Q Can you tell me the year that you first went up to Cook Inlet?

A I think the spring of 1901 or 1902.

Q And what did you do up there then?

A I prospected for a couple of years. My brother, he went there in '95, built the first place where Sunrise is.

Q Your brother built the first place in Sunrise?

A Yes.

Q Is that the one that's on Turnagain Arm?
A Yes.
Q What part of the country did you work in in 1901?
A I was prospecting all of the upper Turnagain Arm and some of the Knik Arm and over to Skilak Lake, down through the Coal Creek—
Q This is the one near Kenai, Coal Creek near Kenai?
A Yes. Down the Kenai, Coal—
Q After you prospected up there, what did you do?
A I went to contracting for the railroad. They were building out of Seward. I started in making ties just about 16 or 18 miles out.
Q Out of Seward?
A Yes, and the moved up to 31 miles just across from Moose Pass, and I was there contracting for almost two years.
Q Do you have any idea what year this would have been?
A Well, yes.
Q You don't have to be exact.
A I set them down the other day, 1932, '33, and '34. I'd [5] estimate '33 and '34 for the railroad.

* * * *

[7] A I went to work, come out from the interior and went up into Nugget Gulch and worked there that summer. Then I come down and went on this—started to run or learn to run it.
Q Was this just a couple years after the San Francisco Earthquake, as best as you can remember?
A Yes. The 'Frisco Earthquake—you know, I helped put in that big hydraulic plant for the 'Frisco people. They kept me on the trail to Seward two-thirds of the summer. That big hydraulic plant in Coal Creek—
Q Where did you run this boat on Cook Inlet?
A Well, that fall we just run passengers up and down. Then we'd pull her out for the winter.
Q Do you remember the places that you ran on the Inlet?
A Yes, from Seldovia up to—miners going up into the stampede in Cache Creek and Nugget Gulch, those places.

Q Where were Cache Creek and Nugget Gulch? What part of the inlet were they in?
A They are up on the Yentna, a branch of the Susitna. You go up the railroad. There's a road runs out there now. What is the first station up there where people go up there fishing so much?
Q You are talking about the Susitna?
A The railroad out of Anchorage. They have a road from there over to the Cache Creek country.
Q I see. Now, when you traveled—when you used the boat [8] on the inlet, do you recall how far offshore you traveled on the boat? Where would you run your boat, between Anchorage and Seldovia?
A Well, that fall was just between Anchorage—running up the Inlet to Tyonek and places like that where they could get a boat and go up the river.
Q When you'd run between Cache Creek and Seldovia, what part of the Inlet would you travel on?
A Travel right up the Inlet from the center and by Seldovia right up the Susitna, or to Tyonek, rather, and Knik a lot.
Q After you ran this gas boat on Cook Inlet, did you do any work at all for the United States Government?
A Not at that time. I did later on.
Q What was that, later on?
A Well, when I went to work for the Government, was what you call working for the Government. I had a mail contract in between.
Q Tell me about your mail contract?
A Well, that comes on this boat. Laid up the boat that fall, that was the first gas boat at the time. Laid it up for repairs for winter, and we fixed it up and then went to work—Jim Ward and I—and we worked around there and started—the Alaska Commercial Company come in there and started on account of the Cache Creek boom.
Q Now, getting back to your mail contract, can you tell me—
A I am coming to that. In the next year, Watson got a [9] contract to finish the railroad down to Kern Creek from Rainbow, the grading. We bought this boat in the fall, and before we contracted with them in the spring,

we worked there all summer, towed the lumber up 63 miles in all around there when they was building the railroad; they got down 63 or 71 miles that year, that they graded on down the Rainbow. During that time the A. C. Company was putting out—getting bids for carrying mail on Cook's Inlet.

That's Seldovia to Homer, Kenai, Kasilof, Tyonek, Knik, and Sunrise—a round trip so I run up there—and my partner and I went over it cross-country to Seward and put in the bid on that mail contract to carry along Cook's Inlet four years, and I was awarded the contract. Brown and Hawkins wanted the bonds on it for me.

Q Did you have to meet any requirements—have to have anything to get the mail contract?

A No. I had one that carried inland waters, all of it.

Q Did you have a license of any kind?

A I got the license that year.

Q What was the license for?

A Well, carrying passengers on inland waters of the United States.

MR. BRADLEY: Object to that last line of question as being leading.

Q (BY MR. CRANSTON) I'd like to have marked as Defendant's Deposition Exhibit 1, Chart 8502, U.S. Coast and Geodetic Survey, Sixteenth Edition, July 4, 1970, [10] corrected through Notice to Mariners, 27/70.

Mr. Odale, I am going to hand you a chart here and ask you to look on it. Is this a chart of the area over which you carried your mail contract from Seldovia? Would you indicate by references to landmarks on the chart where you ran your mail boat?

A Yes. I am just going to tell you that the Cordova postmaster had a little tune on that. He says, "Seldovia and Homer, don't keep a Kenai on Knik and Tyonek. They will have a tough—make it hard for Sunrise and Hope." Those are the cities.

Q Could you indicate with a line, if I give you a pencil, could you indicate—could you draw a line on this map the route that you followed exactly where you had run your boat in the Inlet? Try to indicate as best you can the route that you'd follow when you ran your boat in the Inlet.

A We went by way of Palmer here. I forgot to put that on. We just happened to be in the line. There's only two people there. Goes on up to Ninilchuk. We did deliver there where they had to—I don't know. And Kenai, here's where the refinery is now. Then we went across Tyonek right here close to there. Then later on they put it up the Beluga, had to go up the Beluga River, but then we went across the Knik.

Q Could you just continue with the line?

A Tyonek and Knik was included; Beluga later. Beluga River postmaster moved up there. Then we come out and [11] we goes across up to Knik on the shore. Then we come around here and we went up Sunrise and Hope, Resurrection. Then we come out, go up to Sunrise, then back the same route. Had to make the round trip. I should have laid that down on the table and got over there.

Q Now, when you traveled with your boat, about how far offshore did you run?

A Just according to where we had a passenger to dump off or something else. We were allowed to go anyplace and deliver in Cook's Inlet.

Q Did you ever travel on the west side of the Inlet?

A Lots of times.

Q With your mail boat?

A No, only the times we was over at Tyonek.

Q Generally, and if you can't answer, just say so, when you were going up the Inlet from Seldovia north to Kenai and the Tyonek area, would you travel more or less than three miles from the shore line?

MR. BRADLEY: Object.

THE WITNESS: Oh, we'd travel sometimes real close and sometimes we was out. Of course, if it was night, we'd go right down the Inlet and take the rim because it's rocky for miles out.

Q (BY MR. CRANSTON) You'd go right out the Inlet and do what?

A Go right out and run by compass until we got opposite.

Q About how far?

A In the daytime if it was nice and calm we run pretty [12] close to shore.

Q By "way out in the Inlet," where are you talking about with respect to the middle, would you say?

A Yes.

Q You mean the middle—

MR. BRADLEY: Objected to. It's a leading question.

THE WITNESS: You get the best tides in the middle, yes.

Q (BY MR. CRANSTON) And was this helpful for running the boat at times?

A Oh, absolutely.

Q Now, coming down—

A I will just explain that.

MR. BRADLEY: Objected to as a leading question.

THE WITNESS: You leave Anchorage where it is now. For instance, when we'd come down, we'd have to wait here.

Q (BY MR. CRANSTON) By "here," you are pointing to East Foreland?

A We'd have to wait above that until after high water because we couldn't buck the tide around the point, and then we go down with tide down below to the slacker tide, and it would run longer out in the center than it does along the shore.

Q Do you know about what dates that you had this mail contract—the years? Can you remember what years that would have been?

MR. BRADLEY: Same objection made b * * * [13] written recollection.

THE WITNESS: Just explain things. It was only a 34-foot boat, low shallow draft boat, so we started in building a big boat that winter, and we got ready for part of the summer a 100-ton for the Inlet there. We built that in Seldovia.

Q (BY MR. CRANSTON) Can you remember the year?

A From 1910—

Q You had the mail contract?

A Started carrying—

Q In 1910?

A Yes.

Q And for how many years?

A Either 1909 or 10. Anyway, I had a four years signed contract, and the Cache Creek went broke and closed down. The A. C. Company quit, and so I quit, moved on Anchor Point in 1912.

Q All right. After the mail contract, what did you next do on Cook Inlet?

A I put a fish trap on Anchor Point there, and the darned summer the Katmai Earthquake—it killed all my salmon, took out all the traps.

Q After you had the mail contract, did you do any work which involved the United States Government?

A Not during the mail contract.

Q No, afterwards. What was that, the next thing you did involving the United States Government?

A The next work was for the railroad. In 1915 I was [14] running the Alaska for them all summer.

Q What was the next thing you did on Cook Inlet involving the Government?

A I will give you this list right here. Now, the gas boat, the railroad there, and the fisheries. You know the fisheries and the Game Commission never did get along together.

MR. CRANSTON: I'd like to have this letter dated March 16, 1954, and another letter dated January 12, 1954, marked as Defendant's Deposition Exhibit 2.

MR. BRADLEY: The United States does not waive any objections to which it might have to the exhibit at trial.

Q (BY MR. CRANSTON) Now, Mr. Odale, I am referring to a letter from the United States Department of the Interior from the United States Fish and Wildlife Service dated July 12, 1954, and it refers to the fact that in 1933 you were a temporary assistant?

A Yes, that's what he put as skipper of the boat for the summer.

Q And according to this letter, you worked from 1933 through 1943 with the Fish and Wildlife Service?

A That's right, off and on, most of the time.

MR. BRADLEY: Object to this as a leading question.

Q (BY MR. CRANSTON) Now, could you tell me generally what type of work you did from 1933 through 1943 with the Fish and Wildlife Service, first of all?

A No. I can't tell you all of them, probably.

[15] Q Could you tell me where you were stationed during these years?

A I was stationed at Anchorage, and I had a homestead down on the Tustumena Lake throughout the winter. I'd go down there if I wasn't keeping busy.

August 20, July 17, November 22nd—that was all up—

MR. BRADLEY: Mr. Odale is reading from the list which Mr. Cranston handed him.

Q (BY MR. CRANSTON) Did you ever engage in any patrol activities with Captain Cole?

A Yes. Captain Cole—I helped—I went down the Kenai and helped put up the buildings there during the winter, the Government building for the Fish and Wildlife.

Q Concerning Captain Cole, where did you patrol with him on Cook Inlet?

MR. BRADLEY: I object. He testified that he didn't patrol with Captain Cole in Cook Inlet.

THE WITNESS: He was on the same boat I was on. I had the till. He went off on some other boat. They sent in the fish inspector from Washington the first year.

Q (BY MR. CRANSTON) Can you tell me—first of all, just answer is one question. Did you ever patrol on Cook Inlet for the Fish and Wildlife Service?

A (No audible response.)

Q Where did you patrol?

A Everywhere, every port and bay.

[16] Q Did you ever patrol more than three miles from the shore line of Cook Inlet?

A Yes.

Q Now, what was the purpose of your patrols on Cook Inlet?

A It was to watch out for drift nets, purse seines and too near the entrance to rivers.

If you want me to explain something about that, before Captain Cole come in there, they had five and six and seven traps like in the Kenai River, and the fish were almost extinct. They was catching them all, and he set a limit for the distance, and we had to watch all those places, keep them out of the rivers, tidal water, and all.

Q Were there any boats fishing in Cook Inlet when you were there?

A What?

Q Any fishing boats in Cook Inlet?

A Oh, yes. There were cannery boats and then there was lots of independent fishermen.

Q Could you, with reference to his [*sic*] chart here, Exhibit 1, indicate where the boats fished in Cook Inlet?

A They fished over there some.

Q You pointed to Uyak Bay?

A I'm getting down to Kamishak. That's in Cook's Inlet. That's fartherest west in Cook's Inlet, but we went clear around this portion of the bay.

Q Did the boats fish more than three miles from the shore line in Cook Inlet?

[17] A They could, yes; but they weren't supposed to.

Q I see. And who—let me ask you this question. Who wouldn't let them fish more than three miles from Cook Inlet?

A Oh, there was a lot of them—beach fishing, so forth.

Q But could you explain your answer, "They weren't supposed to fish more than three miles from shore"? What do you mean by that?

A I didn't say that they weren't supposed to. I said they weren't supposed to use purse seines.

Q More than three miles from shore?

A They wasn't allowed to use them at all.

MR. BRADLEY: That's a leading question.

THE WITNESS: A purse seine is almost a mile long, and it's 150 deep. They surrounded and then purse them in. They get tons of fish in one purse.

Q (BY MR. CRANSTON) Now, when you say that they weren't supposed to use purse seines in Cook Inlet, in what part of Cook Inlet could they not use purse seines?

A They couldn't use them on any part at that time when I was with them.

Q Could they use a purse seine in any waters north of the Barren Islands?

A They might have, but I don't know of any of it. They couldn't use them at that time.

Q North of the Barren Islands?

A No, not even around Kodiak.

Q Now, in other words, who told them they couldn't do this?

[18] A Well, that was—I don't know just how far that would reach because the salmon again bunch up when they get in about three to five miles out, and they begin to pack in, bunch, and you can surround them and get several days' pack out of one purse.

For instance, Portlock—I was in there with a small boat part of the time after they made these rules, and I'd go out there to wait a big boat one day. They had a couple of nets set out, but they had about a mile and a half, two miles of purse seine which they wasn't supposed to have aboard. I made them take them to Kodiak and unload it on the Fish-Wildlife dock. They took it away from them.

Q Did you concern yourself with purse seines when you were patrolling Cook Inlet? Did you look for purse seines?

A Oh, we always watch for them because they are one of the most destructive things there is.

Q Did you know any of the fishermen who worked in the Cook Inlet area?

A What was that?

Q Did you know any of the individual fishermen who worked in the Cook Inlet area?

A Yes, I did. I knew most of them; most of them are dead now. They lived ashore and just used beach seines, beach nets.

Q If I asked you to give an estimate of the number of fishermen that you might have known on Cook Inlet, could you give me any figure that would estimate that?

[19] A Lord, that's hard to tell because there was

fishermen with the traps, you know, and lots of them stayed up there. There was 200 or 300, 400.

Q What was the belief or the reputation among the fishermen—

MR. BRADLEY: Object.

Q (BY MR. CRANSTON) —if you can answer this, concerning whether or not Cook Inlet belonged to the United States?

A Well, I supose we always had that understanding—that it did. Everybody understood that. I knew that boat—

Q When you are talking about the reputation that it did belong to the United States, could you indicate by reference to this chart which is Exhibit 1, what part of Cook Inlet you are talking about that belonged to the United States?

A Well, the whole Inlet.

Q You placed your hand—

A We patrolled the whole Inlet.

Q You placed your hand down around Cape Douglas. Is this what you are talking about from Cape Douglas up the Inlet?

A Well, the whole Inlet. This is all in the Inlet clear out to Kodiak, the way I understand it. The Barren Islands across here—

Q Across here you ran your finger to the northern tip of Shuyak Island, the Kodiak Island group?

A (No audible response.)

[20] Q And this was the part—did it matter whether or not it was—as you are talking about—a particular distance from the shore line, if it was part of the United States?

A No. We never understood that. We understood it was their waters, and we were to keep it clear of—increase the salmon.

Q Now, so you are talking about all the water in Cook Inlet?

MR. BRADLEY: Object.

THE WITNESS: Huh?

Q (BY MR. CRANSTON) You are talking about all the waters of Cook Inlet?

A Yes.
Q Did you ever see any foreign fishing vessels in Cook Inlet?
A Oh, there was other vessels, yes, coming in more all the time.
Q Were there foreign countries, say, Canadians or Japanese?
A There was no foreign country boats while I was working for the Fish and Game Commission.
Q Did you ever see any foreign fishing boats when you were running your mail boat in Cook Inlet?
A No.
Q Or your gas boat back around 1901, or around that time?
A No. We never had any foreign boats in there at that time. But there was a foreign boat come in. It was a [21] freighter or a passenger boat or something which they had a license to do.
Q Did you ever see any foreign fishing boats?
A No.
MR. CRANSTON: I have no further questions.

EXAMINATION

BY MR. BRADLEY:

* * * *

[22] Q Did you get this understanding from the license that you received?
A Not altogether, but everybody had that understanding. It was nothing—
Q Partially from the license?
A Well, a good deal, but now you take your coast pilot. You see, where they make charts for it, way out to sea—
Q Could you indicate how far out you thought by reputation was inland waters on the chart? Would you show us? How far out into the sea was inland waters?
A Well, it was from point to point, the way we understood it.
Q Could you draw a line across there for us?

A From three miles off the point on Kodiak out to three miles off this and three miles off that. I know the line ran from Bering Sea right straight almost to the end of the Aleutians.
Q Was this a line you saw on the map?
[23] A Huh?
Q Was this a line you saw on the map?
A It's on the coast pilot.
Q It's on the coast pilot now?
A They have that understanding with Russia.

* * * *

[2] SVRRE OMSUND, called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Svree Omsund.
Q What is your address, Mr. Omsund?
A Box 626, Soap Lake.
Q Washington?
A Yes.
Q What is your present age?
A I am 73, going on 74.
Q What is your occupation?
A Fisherman. I have several occupations but that's my occupation?
Q By that, do you mean a commercial fisherman?
A Yes, commercial fisherman.
Q Have you ever engaged in this occupation, in Cook Inlet, Alaska?
[3] A Yes.
Q When have you done this?
A I think it was in 1957, that is, in Cook Inlet, when I was gill netting up there.
Q For whom were you fishing, there?
A The American Pacific Fisheries; PF they call it.
Q How many years have you been up there?

A That was the first year I fished, up there, gill netting. I have seined, up there, a couple of times.

Q You just gill netted, there, one year?

A One year; that's all.

Q With regard to your occupation of gill netting, in Cook Inlet, can you recall any incident involving a time when you may have been apprehended?

A Yes.

Q What year would this have been?

A That was in 1957.

Q Was this while you were on a fishing vessel, in Cook Inlet?

A Yes. I had my own boat and I was all by myself, at the time.

MR. CRANSTON: I ask that the reporter mark as Defendant's Exhibit 1, Chart number 8502, U.S. Coast and Geodetic Survey, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

[4] (Document marked as Defendant's Exhibit 2 for identification.)

Q Mr. Omsund, I ask that you look at what has been marked as Defendant's Exhibit 1 and ask you if the portion of the map, which I am placing in front of you, including the words Cook Inlet, depicts the area in which you fished?

A Of course, I couldn't pinpoint it, exactly, you know.

Q I am just asking you, at this point, when you speak about Cook Inlet, is this a map of the area where you fished?

A That's right; yes.

Q Now I would ask you, with this red marking pen, to indicate as best you can the place where the arrest, which you have testified about, took place?

A Well, to the best of my knowledge, I would say approximately about here (indicating).

Q Will you place an X there?

A (Witness complies.)

Q You have placed an X, on the chart, between a figure 10 and the Letter L, in the words Cook Inlet?

A Yes.

Q When you were arrested, did the person, who approached you, identify himself as representing any entity?

A Yes.

[5] Q What was the identification this person made?

A The Bureau of Fisheries; that he was from the Bureau of Fisheries. They have a big boat and they are in skiffs. He was going from one fishing boat to another.

Q What government was that?

A It was Alaska, I suppose.

Q What were you directed to do, if anything?

A They stopped me, out there, when they come alongside. They told me to go in to the Harbor, there, you see.

Q By the Harbor, what do you mean?

A Snug Harbor.

Q Snug Harbor?

A Snug Harbor. They followed behind me, as I went in. When I got in, I tied up, alongside of the scow, there, and delivered my fish. Then they came on board and were looking for the license, for the company, because they promised to get my license. When they were and took it to the Superintendent, he didn't have any license, either. So, at that time, I had to fly to Anchorage.

Q What was the specific violation that you were charged with?

A I didn't have a fishing license.

Q Does that mean a license to allow you to fish, commercially?

A Yes. I had the gill net license, but I didn't have the [6] boat license.

Q You needed a license, for your boat, when you said you didn't have this?

A Yes.

MR. BRADLEY: I object to this line of questioning, on the ground that it is leading.

BY MR. CRANSTON:

Q Then you say you flew to Anchorage?

A Yes.

Q What happened, at Anchorage?

A The next day, I was up in the court, there. I got fined $150.

Q Were you asked to make a plea, to say whether you were innocent or guilty?

A Yes. I said I was guilty.

Q What happened to your boat and to the catch which you had made?

A They took the fish, you see.

MR. BRADLEY: I object to the answer on the grounds it is hearsay.

BY MR. CRANSTON:

Q Would you say what they did, again?

A They took the fish, you know, and canned it, right there.

Q By "they," whom do you mean?

A The Bureau of Fisheries. They sent it over to them, you [7] see, from the cannery. I had my boat anchored out, while I was over in Anchorage.

Q Do you know about what month this took place?

A Well, it must have been in July; it must have been in the month of July, yes.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Omsund, with regard to the mark you have made, on the map, in red ink, were you at this time traveling toward Snug Harbor, when you were apprehended?

A Yes.

* * * *

[8] Q At what point did you receive the enforcement order, to go to Anchorage?

A Right after I tied up the boat and they said I had to go to Anchorage. They first were going to take me to Iliamna Lake, but then they decided to take me to Anchorage.

Q At this time, were you an American citizen?

[9] A Yes.

* * * *

Q Did you keep your boat moored, in the United States?

A Oh, yes; yes.

Q Could you tell me where?

A Blaine. I had left Blaine, at the time, you see. I always tied my boat up, there, during the winter. During the summer, I was mostly in Alaska, you know.

Q You testified that you gill netted only one year, in Cook Inlet?

A That's right; in Cook Inlet, yes.

Q You also testified that you purse seined, before this time?

A Yes.

Q Could you tell us what year?

A It was 1927.

Q Could you please take Mr. Cranston's red pen, here, and mark the location where you purse seined?

A You want me to point out where I fished?

Q Yes, in 1927, in Cook Inlet?

[10] A This was all in Cook Inlet is where it was. Here is one place, where we seined, right here.

Q And you have marked that, on a line between the figure 3½ and 6, in the shoreward end of Kamishak Bay?

A Yes. We fished, there, and we fished over here (indicating).

Q You have now made another mark, immediately under the M, in Kamishack Bay?

A Yes; it is just about right there, where we fished. Then we also fished, down here, and up here.

BY MR. CRANSTON:

Q Would you indicate what you mean by "up here?"

A They call it Halibut Cove. I guess this is Halibut Cove, here.

BY MR. BRADLEY:

Q Would you make a mark, there, please?

A This is Halibut Cove.

Q That is a mark, at the mouth of an inlet designated on the map as Halibut Cove?

A Yes. It says, "Halibut Cove," here. My glasses aren't so good and I can't see, so very good, with these glasses.

But we went down to Port Dick. This is Port Dick, here, I guess.

* * * *

[12] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Did you ever get your fish back?

A No.

Q Why did you go to Snug Harbor?

A I fished for that company, you see. They have got the cannery, there.

Q After you were apprehended, at the point you made the X, why did you go to Snug Harbor?

A I had to go in there, to the cannery, to deliver my fish.

Q Were you directed to go there?

A No; that's the only place I had to go, because I fished for that company, and they had the cannery right here, in Snug Harbor.

* * * *

[2] HARRY L. RIETZE,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?

A Harry Rietze.

Q What is your address?

A Box 357, Juneau.

Q What is your age?

A Fifty-one.

Q What is your present occupation?

A Regional Director of the Alaska Region of the National Marine Fisheries Service.

Q How long have you had that occupation?

A Since 1960.

Q When in 1960; do you recall?

A I think probably about October or November.

Q Do you know who preceded you in your position?

A Yes, Mr. John Gharrett.

Q Prior to your assuming your present position had you had other responsibilities in Alaska for N.M.F.S. and its predecessor agencies?

[3] A Yes, I had. I have been a research biologist in charge of the Bristol Bay red salmon studies and then have been coordinator and one of three Assistant Regional Directors, but had such functions as statistics and river basins activities and coordinating the responsibilities or activities of research and management together, the inter action.

Q That was in Bristol Bay?

A No. I came to Alaska as a research biologist in Bristol Bay. Later I was promoted to Assistant Regional Director for Staff Coordination. The Administrative Division came under my supervision and the river basis [*sic*] and statistics. My primary function was support activities that coordinated the activities between management activities and research activities, the two primary functions.

Q When did you take over that position you've just described?

A Oh, I believe it was probably in early '59.

Q Then is it safe to say that prior to then you had responsibilities only in Bristol Bay?

A Yes.

* * * *

[4] Q I'm going to hand you, Mr. Rietze, what in the deposition of Mr. Naab was identified as Defendant's Exhibits "8-A" through "8-F" and ask you to examine

those documents and ask you if you have any familiarity with those.

(Above-described documents examined by the witness.)

A Well, I'm not sure that I would say I am familiar with them. I have seen them in years past. I am not intimately familiar with the charts, no.

[5] Q These are charts that are lodged in the Juneau office of the National Marine Fisheries Service, are they not?

A Yes.

Q Do you know if there are any other similar charts in existence?

A I think there might be. Would you clarify what you mean by similar? What is the degree of similarity?

Q I will ask you, are these, so far as you are aware, the originals of these charts?

A Yes, I think insofar as I would be aware they would be.

Q I take it then you do not know of any (let's put it this way) documents or charts which would be more original than these?

A No.

Q What do you know concerning the origin of these charts?

A Well, I would tentatively identify these as what we've called the Scudder-Gharrett Line Charts. Am I correct in my identification of these?

Q Unfortunately I can't refresh your memory. I have to ask you the questions. I will tell you that these were identified in that respect by Mr. Naab in his deposition.

A Yes. If these are the charts that this cursory inspection would lead me to believe they are, I think they are probably the ones that Mr. Gharrett and Mr. Scudder drew up at one time, probably back in 1957 or so, or '58, in response to [6] some negotiations or meetings that we had with the Canadian Government relative to both governments desiring to curtail the spread of salmon fisheries. So both governments and the various states that were involved in salmon fishing came up with lines

from which these lines would be used to say that no net fisheries would be permitted seaward of the lines.

Q Were these charts presented to the Canadians, do you know, at any international conferences?

A I'm not sure of that. If I remember correctly, the Canadians originated lines first, and I believe the lines went along the States of Washington and Oregon, and at a particular meeting back in '57 or '58 I believe that Mr. Gharrett and Mr. Terry drew some rough lines in response to a request from the Canadians for lines from which Alaska was going to regulate their net fishing for salmon. I'm not certain if the later lines that were refined and drawn have been presented to the Canadians or not. I'm not sure of that.

Q Are these lines represented on Exhibit "8-A" through "8-H" lines which were presented to the Canadians with reference to this salmon fishery on the high seas problem, or do you know?

A No, I do not know. This was before I was directly involved in it and I do not know whether these were presented [7] to the Canadians or not.

Q Do you know whether these were the lines that were produced in response to the Canadians' request for lines similar to theirs?

A I think they are but again, I am not an enforcement specialist, and I have an enforcement staff that's advisors to me and I would think that Ron Naab would be able to identify these more precisely than I would be able to as an administrator.

* * * *

[16] Q When you speak of enforcement and surveillance, what type of laws are you enforcing?

A We're enforcing bilateral or multilateral agreements that we have with foreign countries, some twelve or thirteen [17] either treaties or agreements that we have with the Soviet Union, Japan and Canada.

* * * *

[21] Q May Canadians fish in the territorial sea or inland waters of the United States?

A No.

Q Even for halibut?
A No.
Q No, they may not?
[22] A No, they may not fish for halibut in the inland waters or territorial waters of the United States.
Q In your work that Mr. Cranston has discussed did any of your activities depend upon the limits of the territorial sea of the United States?
A I'm not sure I understand that question.
Q Did laws that you were to enforce—did the regulations applicable to certain fishing change at the limits of the territorial sea for instance? Did you have to know the location of the territorial sea for some of your activities as Regional Supervisor for National Marine Fisheries Service?
A Yes.
Q Did you ever ask for advice as to the location of this territorial sea?
A Yes, we have.
Q Who did you ask and what was the response?
A I think we've requested from Mr. Terry, both in his capacity as Acting Deputy Director of the Bureau and also when he was Chief of the Division of International Affairs. We have requested from him guidance on where the limits of the territorial sea would be in waters off Alaska.—also other individuals from time to time for several years. Mr. Rollins is one that I think we've requested this information from and I think, perhaps, Mr. Baker when he was Chief of the Division of Resource [23] Management, that we have requested guidance on for the territorial waters.
Q What did they tell you?
MR. CRANSTON: I object to whatever they told him as being hearsay.
Q What were you instructed?
MR. CRANSTON: The same objection.
A We were instructed to use Pearcy's principles and follow these, and if we found foreign fishing vessels that were within three miles of a point of land we could be guided by this, but be guided by Pearcy's principles

in determining where the boundaries of the territorial waters were.
Q What do you mean by Pearcy's principles?
A G. Edsell Pearcy set forth in a publication—described the ways in which—I believe it was the Geneva Conference—in which it was accepted by the nations at the Geneva Conference in which they would determine how the limits of the territorial sea and bay closures would be made, and Pearcy had a publication out on this. We used Pearcy's principles following the sinuosities of the coast and the twenty-four mile line closing for bays and the definition of the difference between a bay and an indentation. We followed these principles in determining our areas of where we were enforcing international waters, the regulations [24] that we were responsible to enforce in international waters.
Q Prior to this year were you ever given a set of maps showing the territorial sea of the United States and told, "This is official. Follow it"?
A No, sir, we were not.
Q The international agreements, bilateral and multilateral, you spoke of, do those apply to areas outside the territorial sea or areas inside the territorial sea?
A Outside of the territorial sea.
Q Do you know of any foreign country that is permitted to fish in the territorial sea of the United States?
A No, I do not.

* * * *

[29] RECROSS EXAMINATION

BY MR. CHARNEY:

Q In your enforcement activities have you assumed that Cook Inlet was a historic bay?
A I think we've, again using Pearcy's principles of assuming the line across there from which we have measured the territorial sea—it would be from Kalgin Island across this way, and I have never considered the question in my own mind—have never considered the question of whether Cook Inlet is or is not a historic bay.

MR. CHARNEY: No further questions.

MR. CRANSTON: Then you've simply used a pure mathematical computation, is that correct, in applying Pearcy's principles?

A Yes, I think that's correct.

* * * *

[1] HENRY CLAY SCUDDER,

a witness produced on behalf of defendant, being first duly sworn by Ada R. Michelsen, Notary Public of the State of California, for the County of Santa Barbara, to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

THE REPORTER: State your full name, please.

THE WITNESS: Henry Clay Scudder.

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Scudder, what is your age?
A Seventy-nine.
Q What is your address?
A 3768 Brenner Drive, Santa Barbara.
Q How long have you lived here?
A Since September, 1962.
Q Are you presently employed?
A No, I am retired.

Q Mr. Scudder, did you prepare at my request, in preparation for your deposition, a resume of your employment, experience, and history?

A Yes.

MR. CRANSTON: I would like this document entitled "Duty Stations and Assignments with U.S. Bureau of Fisheries [2] and Successor Agencies" marked as Defendant's Deposition Exhibit 1.

(Whereupon, the exhibit so described was so marked by the reporter.)

BY MR. CRANSTON:

Q All right, Mr. Scudder, I am going to hand you Defendant's Deposition Exhibit 1 and ask you if you prepared this at my request.

A No, I prepared that for—yes, yes.

Q All right now, without going into a lot of detail on it, does it accurately state your employment history?

A As near as I can tell from the old assignment orders I have and the field diaries, this is reasonably accurate.

MR. CRANSTON: Counsel, would there be any objection based on hearsay to the incorporation of this document into the record of this deposition so that we don't have to go through the entire question and answer on what he has done?

MR. CHARNEY: I gather that he is testifying that this is accurate.

BY MR. CRANSTON:

Q Yes. Are you testifying that this is accurate?

A Yes, within reasonable limits. I used the years, rather than the months and the days.

MR. CRANSTON: Fine. But there would be no hearsay objection, is that correct, as to this? Because it is certainly not prepared in the course of his employment.

[3] MR. CHARNEY: No, I gather that he is testifying to it. Do you want me to ask a question?

MR. CRANSTON: If you want to voir dire the exhibit, yes.

VOIR DIRE EXAMINATION

BY MR. CHARNEY:

Q Mr. Scudder, did you prepare this by refreshing your memory, or did you prepare this from other documents?

A I took the documents from my old field reports and assignments of employees in the Alaska service and duty station that was published for a few years by the Alaska Annual Report.

Q Do you remember these things on your own or after refreshing your recollection?

A I remember the places and the assignments I had, but the dates, I had to check back in the old records for the dates.

MR. CHARNEY: I have no further questions.

THE WITNESS: All those dates are documented in government reports.

DIRECT EXAMINATION (continued)

BY MR. CRANSTON:

Q And after you refreshed yourself as to these dates, now you remember these to be the correct dates, is that correct?

A Yes.

[4] MR. CRANSTON: You stated you had no objection?

MR. CHARNEY: I don't think there is a hearsay objection.

BY MR. CRANSTON:

Q Mr. Scudder, were you in the Cook Inlet area in 1920?

A Yes.

Q In accordance with your work in the Cook Inlet area, did you prepare reports of your daily work and movements?

A Yes.

Q Were these reports made by you in the course of carrying out your duties?

A Yes.

MR. CRANSTON: I would like to have this document, consisting of six pages which are headed "Report of Daily Work and Movements of Henry C. Scudder, Assistant Agent, Alaska Fisheries Service, for the period from July 1st to 15th, 1920, inclusive," two pages, and the same report for the period of July 16 to 31, 1920, inclusive; and two pages of the same type of report for the period from August 1st to August 15th, 1920,

inclusive, I would like all these six pages collectively marked as Defendant's Deposition Exhibit 2.

(Whereupon, the above described documents were so marked by the reporter.)

BY MR. CRANSTON:

Q Mr. Scudder, I am going to hand you [5] what has been marked as Defendant's Deposition Exhibit 2 and ask you if you recognize these six pages.

A Yes.

Q Were these pages prepared by you?

A Yes.

Q And they were prepared by you in connection with your duties as Assistant Agent for the Alaska Fisheries Service?

MR. CHARNEY: Objection.

BY MR. CRANSTON:

Q All right, would you tell me the circumstances under which these were prepared?

A It was required by the office, the Washington office, that each field agent make a report of his field activities.

Q And was this such a report?

A Yes.

Q And where on the second page the words "H. C. Scudder" appear, is that your signature?

A Yes.

Q And on the fourth page—well, let me hand you this—I will ask you to look at the signature on the fourth page.

(Whereupon, witness studies fourth page)

A Yes, that is my signature.

Q Is that your signature?

A Yes, uh-huh.

[6] Q And on the sixth page, there is a signature, "H. C. Scudder," is that your signature?

A Yes.

Q Did you submit this report to the Washington office?

A The original one to the Washington office.

Q And what is this particular exhibit? Is this a copy of what you submitted?

A It is a copy of the original, yes.

Q Did you keep this copy yourself?

A Yes, I kept that in my personal file because of an incident that is reported, I believe, in relation to Iliamna Bay where some cannery men had left their employment in Bristol Bay and had walked across the peninsula hoping to get a boat that would take them to Anchorage, and I believe two of them perished, and two of them were picked up. We picked them up on the beach that day, and the reason for this was that I had hoped that at some future time to write a story around this, so I wanted the notes that I had made that covered this itinerary as a reference.

Q Your notes for July 26th of 1920, which appears on page 4 of the exhibit, states as follows:

"Arrived in Kenai at 1:00 a.m. Took up temporary quarters at the Libby cannery. The period from the 26th to 31st was used in visiting trap locations and canneries in Cook Inlet. A fair run of fish is making in this [7] locality, but the majority of them have set in North of Point Possession. From all reports, the South end of the Inlet has had very little of the run."

Now, Mr. Scudder, when you refer to the "South end of the Inlet" in this particular report, what part of the Inlet do you refer to, what portion?

A Oh, that would have been from Illiamna Bay down to the southern extremity of Cook Inlet district. I think it is now referred to as the Southern District and the Outer District, that is, the southern limits of Cook Inlet area.

Q What landmark do you refer to, then?

A That is from Cape Douglas to Point Gore.

Q Now, in 1920, did you concern yourself with the south end of the Inlet?

A Yes, I was concerned about the run down there in that area because that would have been reflected in a later run further up the Inlet.

Q Did you have management responsibilities, fishery management responsibilities in that year?

A Oh, yes.

Q Was this part of the Inlet under your management responsibility?

A Yes.

Q By this part, I refer to what you referred to as the south end.

[8] A Yes.

MR. CRANSTON: I would like to have marked as Defendant's Deposition Exhibit 3 a photocopy which is blown down in size of U.S. Coast and Geodetic Survey Chart 8502, 16th Edition, July 4/70, corrected through notice to mariners 27/70, together with an overlay which contains the lettering "proposed base line from which to measure three-mile limit for fishery regulations, overlay for U.S.O. & G.S. Chart 8502, Cape St. Elias to Shumagin Islands."

(Whereupon, the Chart 8502 and its overlay were marked as Defendant's Deposition Exhibit No. 3 by the reporter.)

BY MR. CRANSTON:

Q Mr. Scudder, I am going to hand you what has been marked as Defendant's Deposition Exhibit 3 and ask you if you recognize it?

A Well, this is a greatly reduced form, but it is evidently a copy of, a reproduction of a line that I projected.

Q Then the answer is you do recognize this?

A Yes.

Q Now, did you place or cause to be placed on the overlay the black line which appears on it?

A What was the question?

Q Did you place or cause to be placed on the overlay that black line which appears on it?

A My black line was on the original chart, not on an overlay, the one that I made.

Q Does the black line which you placed on the [9] original chart coincide with the line as it appears on the overlay?

A Yes.

Q All right, did you place or cause to be placed on the chart the lettering which commences "Proposed base line from which to measure three-mile limit for fishery regulations"?

A Yes.

Q Now, down in the lower right hand corner, there is a notation which is indicated, "4/57": What does that indicate?

A That was the date the thing was made.

Q Would that indicate the date about which you prepared the line and the lettering?

A Yes, yes, it was I believe in 1957.

Q Were you asked to do this?

A Yes.

Q Who asked you to do this?

A The Regional Director, John Gharett.

Q You say "Regional Director": What was he a Regional Director of?

A Region Six in Alaska, that was all Alaska.

Q And that was for the United States Bureau of Commercial Fisheries at that time?

A That's right.

Q At the time you prepared the chart, by whom were you [10] employed?

A By the United States Bureau of Fisheries.

Q And your employment at that time would be disclosed by Exhibit 1, which lists your employment history, is that right?

A Yes.

Q Did you prepare this chart as part of your duties?

A Yes.

Q Now, with reference to the portion of the chart which includes Cook Inlet, what if anything did you consider in placing Cook Inlet within the landward side of that base line?

A Well, we had always considered Cook Inlet as Alaska Waters.

Q Were there any precedents, if any, you relied on?

A Yes, we had the Southwestern Alaska Reservation, which was set aside because of the diminishing salmon runs, and in Bristol Bay and Cook Inlet, and this was divided into three areas: Bristol Bay, Kodiak, and Cook Inlet.

Q Did you consider any other matters besides the Southwestern Fishery Regulations with respect to Cook Inlet?

A You mean in this vicinity?

Q With respect to Cook Inlet.

A Well, Shelikof Straits, that was taken into consideration, that was considered as Alaska waters.

Q At this time I am referring to the Cook Inlet [11] area and what other precedents did you rely on, if any?

A We had the 1942 White Act.

Q You mean the 1924 White Act which described these areas. Do you know if any other charts of this type or nature were prepared by the Bureau of Commercial Fisheries or the Fish and Wildlife Service?

A This is the only one that I recall as having been made in our office for this particular region.

Q Do you know for what purpose this chart was prepared?

A Yes, that was to delineate the base line upon which the United States government proposed that the high seas fishing be limited to, that is, three miles outside of that base line would be the limit of the high seas fishing, as opposed to fishing in Alaska waters.

Q Did you ever attend any of the conferences where any of these matters were discussed?

A Not where the map was used, no.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. CHARNEY:

• • • •

[17] Q And some of it at Shumagin Island: You drew those lines also?

A No, I didn't draw those lines.

Q Now, have you gone over this map in detail to make sure that it is exactly what you drew.

A As near as I can tell from my memory. I know at the time I was preparing this chart, there was a great, there was a considerable consideration being given to the southern limits of Shelikof Straits, and I am not too sure if this was my line, whether my line went from here to here. (indicating.)

Q Okay, let's make sure we understand each other. [18] When you said, "I am not sure that that is my line," it is the line from Cape Kilokak Rocks?

A I believe so, yes.

Q Of whether you drew from Kodiak Island to what, Foggy Cape?

A Yes—no, it would have been right angles, it would have been to the same point.

* * * *

[21] Q Did you ever seize a foreign vessel in Cook Inlet?

A Did I ever seize one?

Q Yes.

A No.

Q Did you ever board one?

A No.

Q Did you ever tell any foreign vessel or foreign [22] fisherman to stay out of Cook Inlet?

A No.

* * * *

Q Were there other maps you drew?

A Did I draw other maps?

Q Yes.

A I drew a great number of maps.

[23] Q Did you draw others like this of other areas of Alaska?

A Yes, southeastern.

Q How about Bristol Bay?

A I don't recall making any detailed maps of Bristol Bay. I may have in connection with the gill-net fishery.

Q Now, what did you do there?

A Pardon?

Q What did you do in that regard, what type of maps?

A I am not too sure. I may have made one, but I can't say for sure that I did. I know a lot of reports went over my desk regarding the history of the gill-net fishery of Bristol Bay, but whether I made any maps in connection with it or not, I don't recall.

Q Are you a lawyer?

A No. sir. My formal education was in engineering.

MR. CHARNEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Scudder, with regard to the placement of the line on Defendant's Deposition Exhibit 3, you do recall—or I will question you—do you recall drawing the line as is represented on the overlay, commencing at Cape Yakataga thence to Cape St. Elias, do you recall?

A The alternate line?

[24] Q No. I will hand you the exhibit and ask you to look at it. Starting at the righthand corner, it picks up at Cape Yakataga.

A Uh-huh.

Q And proceeds to Cape St. Elias?

A Yes.

Q Now, is this the line as depicted on that exhibit which you intended to draw back in 1957?

A As I recall it, that is it.

Q And then proceeding on as it appears on the exhibit to Hinchinbrook Island?

A Yes.

Q Is that the line you intended to draw?

A Yes.

Q And then proceeding to Zaikof Point, is that the line you intended to draw?

A Yes.

Q And then proceeding to Cape Cleare?
A Yes.
Q Is that the line you intended to draw?
A Yes.
Q And then to Seal Rock?
A Yes.
Q Is that the line you intended to draw?
A As I recall it, that is it.
Q And then to Perl Island, is that the line you [25] intended to draw?
A As I recall it now, I think we used Point Gore as a point of delineation.
Q Are you saying it could either have been Point Gore—
A It could have been either Point Gore or Perl Island.
Q And then to Point Banks?
A Then to Point Banks, yes.
Q And thence to Marmot Cape?
A Yes.
Q And thence to Ugak Island?
A Yes.
Q And thence to Cape Sitkinak?
A Yes.
Q And from Cape Sitkinak thence around Kodiak Island and to the opposite shore of the Alaska Peninsula.
A As I said before, it is not quite clear to me now whether that was the line or whether we ran the line straight across to commence at right angles at the southern tip.

* * * *

[26] Q Now you said you had boarding authority on the [27] high seas. Was it your responsibility to enforce various treaties to which the United States was a party?
A Yes, we had the Whaling Act, the Halibut Act, the High Seas Fishing Abstention on the 175th east meridian.

* * * *

[28] RECROSS EXAMINATION

BY MR. CHARNEY:

Q Would you board these foreign vessels on the high seas?
A Did I board?
Q Would you, did you have authority to?
A Have I been aboard them?
Q Yes.
A On the high seas?
Q Yes, in the course of your routine patrols.
A Yes.
Q Did they have closed seasons also?
A In this instance, it was Japanese fishing boats that were fishing on a quota in specific areas in the Bering Sea on species other than salmon. Our interest in this boarding was to determine if halibut was being caught incidental to the other fishes.
Q Why was this?
A We wanted to determine if there was an excessive amount of halibut being taken with their trawlers, who were fishing bottom fish for the purpose of scrap fish for meal and oil, and we were concerned as to whether or not they [29] were taking halibut, and if so, to what extent.
Q Would this be a violation of the treaty?
A Yes.
Q Were Americans free to fish salmon more than three miles out all year?
A In what area?
Q Say in Bristol Bay.
A In the Bristol Bay, yes, they fished more than three miles off shore, certainly.
Q Did they ever have closed seasons?
A Did they what?
Q Ever have closed seasons?
A Closed season? Well, the Bristol Bay fishing season usually started on the first of July, and it was played by ear, relating the catch to the availability of spawning stocks, and when it reached the point that it looked critical, why then they would close it off for a day or two days or three days or a week, depending upon the availability of spawning stock.
Q Did Americans fish more than three miles off of the line shown on Deposition Exhibit 3?

A Yes, they trawl off there.
Q Where?
A Well, we have had trawlers all the way from Bering Sea down.
Q Did you ever watch for them?
[30] A Ever watch them?
Q Were they part of your, were they under your regulation?
A They are part of our responsibility, yes.
MR. CHARNEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Just a couple more, Mr. Scudder. You were asked whether you ever seized a foreign vessel in Cook Inlet, and you said you never had. Did you ever personally observe a foreign fishing vessel in Cook Inlet?
A No.
Q Now, when you speak of Americans fishing more than three miles off shore, do you refer to fishing by trawling more than three miles off shore?
A Well, yes, and we had purse seining more than three miles off shore in southeastern Alaska—that was in the early days of course, of fishing.

* * * *

[2] CLAUDE WILLIAM SHEA

called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

[3] Q Have you had any former occupations, with the United States Government?
A I began my career, with the United States Government, in 1942, as a biological assistant, on Kodiak Island. I went into service and then I returned to state

service and transferred back to the United States Fish & Wildlife Service, in 1953. I was employed as Commercial Fishery Agent GS7, out of Cook Inlet, with my main station at Anchorage, Alaska.
Q How long did you work as Commercial Fishery Agent, in Cook Inlet?
A The exact dates I am not sure of, but it was approximately from April until October or November, of 1953.
Q You were there, then, one year, is that correct?
A One commercial fishing season and the hunting season.
Q When you were stationed on Kodiak Island, in 1942, did you have any involvement with the Cook Inlet area?
A None.
Q Generally, what were your duties, in Cook Inlet, as Commercial Fishery Agent?
A My duties, as Commercial Fishery Agent in Cook Inlet, were to enforce the commercial fishing regulations and game regulations, as I could interpret the game law, [4] under the direct supervision of Mr. Larson, who was the Supervisor for the region.
Q When you talk about commercial fishery regulations, in Alaska, are you familiar with the legislation known as the White Act?
MR. BRADLEY: I object to the question.

BY MR. CRANSTON:

Q Are you familiar with the White Act?
A No.
Q What regulations are you familiar with?
A Those published in Juneau and distributed to the region, in pamphlet form, that set aside areas, regions, opening and closing dates and the mesh size, in regions.
Q What was the type of fishery carried on, in Cook Inlet, while you were there, and I refer to commercial fishery?
A Basically, it was stake set nets and drift gill nets, in the Inlet, for salmon.

Q Did any regulations apply to the drift gill net fishery?

A Yes, sir.

Q Generally, could you describe the type of regulation involved, with respect to the gill net fishery?

A There was fish size, mesh depth, net length; there were open and closed periods; there were certain restricted areas, as to the mouths of streams and the closeness of gear. Stake set gear couldn't be closer [5] than—this is from memory only, don't quote—600 feet, 300 feet between traps or 600 feet between stake nets and traps, and trap distance which is the part I don't know. We did have commercial, driven fish traps, on the Ninilchik beach.

MR. BRADLEY: I object to this as being evidence of what the regulations actually were.

BY MR. CRANSTON:

Q Did you ever engage in any patrol activity, in Cook Inlet?

A Yes, sir.

Q This was while you were Commercial Fishery Agent?

MR. BRADLEY: Objected to as being a leading question.

A Yes, sir.

BY MR. CRANSTON:

Q What means did you use, to carry out your patrols?

A The patrol was basically done with government aircraft, twin engine Grummans and Widgeon aircraft, some boat patrols by government owned small craft, 30-foot vessels. As my duties were directing the placement of enforcement people, also, I did not utilize the patrol craft, because it was too slow, between points. I basically relied on aircraft patrols of the Inlet, to observe and locate concentrated fishing areas—that should be rephrased to areas that held commercial fishing boats, that would be capable of violations. I kept most of the fleets under [6] observation, as to the runs of fish, as they were expected and where they were expected, and deployed the personnel, that I was responsible for, for preventive enforcement type patrols.

Q When you talk about fleets, to what do you refer?

A I am referring to the floating fishing vessels, of gill net capacity or of gill net type. There is a regulation, 42 feet, that all vessels be less than that. The normal fishing vessel would be 28 feet to a 35-foot vessel.

MR. CRANSTON: I would like to have marked as Defendant's deposition Exhibit 1, U.S. Coast & Geodetic Survey Chart 8502, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document marked as Defendant's Exhibit 1 for identification.)

Q Mr. Shea, I am going to hand you what has been marked as Defendant's Exhibit 1 and ask if included within the area, designated on that exhibit as Cook Inlet, is the area over which you carried out your responsibilities, as Commercial Fishery Agent?

A Yes, sir; that, in addition to land not mentioned, in your question.

Q Generally, with reference to geographic features, on Exhibit 1, would you indicate the area over which you [7] carried out your duties?

MR. BRADLEY: If this question goes to an interpretation of the regulations, I object.

MR. CRANSTON: I want him to tell me, factually, the area.

BY MR. CRANSTON:

Q At this point, don't make any marks on the chart, but describe—in reference to land marks—the areas over which you carried out your duties?

A As I previously stated, my residence station was Anchorage, Alaska, between Knik Arm and Turnagain Arm. Patrol flights were conducted from Anchorage and from Kenai. During the peak of the fishing season, my flights originated in Kenai. I flew southerly, in commercial aircraft, from Kenai, in a southwesterly direction, as far as English Bay or the town of Seldovia. This took care of the beach fishery patrols, the fish trap patrols.

We went westerly, from Seldovia, to Snug Harbor, on the westerly shore of Cook Inlet. We then flew northerly, past and inside Kalgin Island to Redoubt Bay and West Foreland. We would double back and come back down, through the center of the bay—inlet—over Kalgin Island and down into the drift gill net area, and would terminate the patrol, if it warranted [8] termination, then return to Kenai and the flight, usually, under normal circumstances would consume about a two-hour flight.

Q Would you take a red marking pen and draw an outline of what you referred to as the drift gill net area, on Exhibit 1?

A In the way of explanation, as to defining such a drift gill net area, drift gill netting is accomplished in cloudy water or in the dark of the evening. Being in this latitude, darkness was not too prevalent, and the fishermen then relied on the cloudy water. The cloudy water would extend about—as far as I recall—to Anchor Point or thereabouts. So that the prime gill net area would apply in a broad area, southerly of Kalgin Island, into Snug Harbor and down in an area of this magnitude (indicating).

Q You have drawn a figure, on the map, outlining in red, the southerly extent of which is approximately the letter L, in Cook Inlet—?

A Yes, sir.

Q —encompassing an area which extends up to a line, approximately at the latitude of Kenai?

A Yes, sir.

Q By this area, you have indicated that within that outline area is the area of the drift gill net fishery?

[9] A To my recollection, it is the prime area. There are other areas fished, I am sure. This was the concentrated area that we had our patrol in.

MR. BRADLEY: As to the conclusion, which Mr. Shea has drawn, I object that he is not qualified to make a statement as conclusive as that, having enforced in Cook Inlet only one year.

BY MR. CRANSTON:

Q Did you ever observe drift gill net boats, in the area you have outlined in red?

A Numerous times. On most open fishing season patrols, this was the concentrated area, in which I observed commercial fishing by gill net.

Q What type of training did you receive, relative to your knowledge of commercial fishing activity?

A I have fished, commercially, when I attended high school, in Puget Sound; both gill net and reef net. Prior to appointment, in Cook Inlet, as Commercial Fishery Agent, I was approximately, for three and a half years, Commercial Fishery Agent for the State of Washington, in Puget Sound, which included gill netting and reef netting and purse seining and other types of enforcement, other than salmon regulations. I basically had approximately—prior to the Inlet—six years of commercial fishery experience.

[10] Q Did this six years include drift gill net experience?

A Yes.

MR. BRADLEY: Objection, for the record.

BY MR. CRANSTON:

Q Did you patrol the area which you have outlined in red?

A Yes, sir.

Q What type of activity were you looking for, in that area, when you patrolled?

A Early and late fishing, contrary to the rules and regulations, as established by the Fish & Wildlife Service.

Q Were you looking for any other type of activity?

A Well, all observed commercial violations are synonymous with a routine patrol.

Q Who was your immediate supervisor?

A Holgar Larson.

Q Did you receive any instructions, regarding the areas you were to patrol?

A Yes.

Q From who were these instructions received?

A Directly from Holgar Larson.

Q Did you carry out your patrol, pursuant to his instructions?

A Yes, sir; to the best of my ability.

* * * *

[12] Q Did you ever engage in any patrols, while on a patrol vessel?

A Will you rephrase that, please?

Q Did you ever, yourself, engage in any patrols, on a vessel, as distinguished from an aircraft?

A Yes, sir.

Q Where did you make your vessel patrols, again with reference to land marks on Exhibit 1?

A From Seldovia to English Bay or Port Graham Cannery.

Q What vessels were these, on which you did this; do you recall the names; you have just referred to two, earlier in your deposition, the Chum and the Steelhead?

[13] A The Chum and the Steelhead.

Q Would it have been one of those?

A It would have been one of those vessels. I believe it was the Chum.

Q In your patrolling, did you concern yourself with your distance from the shoreline, in Cook Inlet?

A No, sir.

Q Did you ever make any arrests or stop any fishing vessels, in Cook Inlet, or attempt to stop any vessels, pursuant to your duties?

A Yes, sir.

Q Would you indicate, by this black marking pen. where in Cook Inlet you made the attempt?

A Speaking of one, specific instance, at this point?

Q Well, was there more than one instance, if you can recall?

A At this point, I would like an interpretation if vessels tending stake nets would be classified as this type of fishing vessel?

Q Again, let me qualify that, with respect to the drift net fishery.

A In answer to your question, regarding the drift net fishery, it was approximately in this location designated by a black arrow. I will indicate the approximate location of one, which was observed and [14] arrested.

Q You have placed a dot, at the top end of a black arrow, within that red, outlined area, which you earlier described?

A Yes, sir.

Q What month would this have taken place in?

A It would have taken place in the month of July.

Q What was involved, if you can remember?

A The incident I am referring to refers to a routine patrol, by government aircraft, on a closed patrolling, after the legal open season. Approximately two hours to two and a half hours, after closed area, I was completing my routine patrol, down the middle of the Inlet, and I observed a gill net vessel, with his full gear—and by this I mean net—still in the water and no attempting being made to recover the gear, contrary to the rules and regulations. He was in violation of fishing, during the closed period.

Q What did you do?

A I instructed my pilot to circle the aircraft and to buzz him, to see if he was asleep or arouse him enough to indicate that he was in violation. We had no response, from the vessel, at all, and after numerous passes with the aircraft, we landed. I then personally boarded the fishing vessel and looked for evidence of the [15] reason for violation. No one was aboard the vessel, at that time, and I began retrieving the net, by hand, from the water.

Q Did the vessel have a name?

A Yes, either a name or a number.

Q What was the name or the number?

A I do not recall that, at this time.

Q You said you retrieved the gear?

A Yes, sir.

MR. BRADLEY: That is a leading question. I object to it.

BY MR. CRANSTON:

Q What did you do with the gear?

A I removed the gear from the water and stacked it, in the boat, taking the fish from the net and attempting to separate the majority of the fish.

Q Then what did you do?

A I radioed, an open broadcast, on the fishing channel frequency—correction. This is an assumption, on my part. I called for a cannery tender, to aid me in taking the boat under tow, at my direction, to Snug Harbor, and abate the net and boat and fish, in the name of the United States Fish & Wildlife Service. I requested that the fish be processed and the fish tickets be made out to the Fish & Wildlife Service, [16] on which I received the fish tickets and held them as evidence of illegal fish being taken, and asked that the net and the boat be held, until court.

Q Was there a court proceeding?

A Yes, sir.

Q Were you present, at the court proceeding?

A Yes, sir.

Q Would you describe what took place, at court, to the best that you can remember?

A To the best of my knowledge, at this time, I cannot recall the court proceedings, other than presenting the fish ticket to the Commissioner's Court, as evidence of illegal fishery. I can remember the disposition of the fish that were seized.

MR. BRADLEY: I object to the answer as being hearsay.

A (Continuing) I can recall the fish tickets being presented, as evidence, and the court awarding the fish to the United States Fish & Wildlife Service. A fine was imposed on the owner of the vessel or on the operator of the vessel. The fishing net and the boat were then returned to the operator.

MR. BRADLEY: I object to this, also.

BY MR. CRANSTON:

Q Do you recall, at this time, the name of the operator?

A No, sir.

[17] Q What court was this; where was the court located; do you recall the town?

A It would be an assumption, on my part, at this point, to say definitely that it was in Jack English's

court, in Seldovia. We also held court in Kenai, Alaska, two designated points and the only two.

Q The Jack English, that you referred to, was he the Commissioner?

A Commissioner of Court. These records could be verified, through the Commissioner's Court.

Q Did you ever observe any foreign vessels fishing in Cook Inlet?

A Not to my knowledge, sir.

Q Did you ever observe any Canadian vessels, fishing for halibut, in Cook Inlet?

A Not to my knowledge, sir. May I make a point, here?

Q Yes?

A I believe that Cook Inlet was designated as spawning grounds, for halibut, under international treaty, and I don't believe that they were allowed to long line, in the inlet.

• • • •

[19] Q Did you ever receive any instructions, from anyone in the Fish & Wildlife Service, relative to a policy regarding Canadian halibut vessels, in Cook Inlet?

A No, sir.

Q On your aircraft patrols, did you have to abide by any laws and regulations of any other agency?

A Yes, sir.

Q What agency?

A U.S. Army, the Air Force.

Q Does an instance, involving these regulations, come to your mind?

A Yes, sir.

Q What was that?

A The particular aircraft, that I was in, was flying above the designated elevation—

MR. BRADLEY: I object to that as being a conclusion.

[20] A (Continuing) The aircraft was flying above 2,000 feet, and we were bracketed by army jets and instructed to return to a lower level, where we were not in their protective radar screen type patrols.

MR. BRADLEY: I object to the answer as calling for a conclusion.

BY MR. CRANSTON:

Q Where did this take place?
A Somewhere south of Kalgin Island, down the middle of the inlet.
Q Could you indicate by a red circle, approximately where this took place?
A No, sir.
Q You don't know, specifically?
A I don't know, with reference to any points of land.
Q Could you determine your distance as being within or more than three miles, from any point of land?
MR. BRADLEY: Objected to as being speculative.
A The particular instance, no. The flight originated in Anchorage. I boarded the aircraft in Kenai and we were enroute south, to a point I do not recall, now. We made numerous flights to Iliamna and Cold Bay, and at this time I recall that was the flight we were—or one of the flights that we were on.
Q So, then, you were unable to determine your distance [21] from any shoreline, is that your testimony?
A Yes, sir.
MR. BRADLEY: Objected to.
A (Continuing) It was approximately half an hour, after takeoff.

BY MR. CRANSTON:

Q From where?
A Kenai.
Q How fast did you usually fly?
A 160 knots.
Q In what direction were you flying?
A Southwesterly.
Q To—?
A Toward Iliamna.
Q By Iliamna, do you refer to the bay, Iliamna Bay?
A Lake Iliamna and Cold Bay. We did not fly over the mountainous area. We flew down and went through the old Iliamna Pass, when we went over land.

Q Your course to Kenai, then, would have been on a straight line to what point, on the coast?
MR. BRADLEY: Objected to.
A On a routine flight, I would have instructed to fly over the fishing area, which would have been down the middle of the inlet, terminating the flight at Cold Bay, which would have been a conjunction flight with [22] the Biological Division.

BY MR. CRANSTON:

Q I am trying to determine, exactly, if you can remember, what your initial course was, say, for the first 30 minutes out of Kenai and if you were heading toward any point, at all?
A On a true north course, of approximately 200 degrees.
Q By that, do you mean an azimuth of 200 degrees, for the first 30 minutes?
A A true southerly course of approximately 200 degrees, which would have put us down the middle of the inlet, which was a safety factor and also observation for illegal fishery.
Q You said that your speed was?
A Approximately 160 knots.
Q And this notification took place approximately 30 minutes after you left Kenai?
A Off the record?
Q No; we are on the record?
A That is an assumption. The time is an assumption, on my part.

• • • •

[26] Q You cannot remember where you were flying to, of your own personal knowledge, now?
A As to the point of origin, yes; as to the point of destination, no.
[27] Q And you cannot remember, precisely, how far you were out into the flight, when they stopped you?
A The exact distance, no, sir.
Q The time?
A The approximate time, only.

Q Do you know how fast you happened to be flying, at that time?

A The normal flight speed was 160 knots to 180 knots.

Q But you don't know how fast you were flying, at that time?

A No, sir. It was not my responsibility.

Q So you don't know, with any real degree of particularity, where you were?

A The exact location, no, sir. The approximate location, yes.

* * * *

Q At this speed, on your patrols, would you necessarily have noticed a vessel or have stopped for a vessel or buzzed a vessel, unless you noticed—in flying over—that he were illegally fishing?

A Would you rephrase that, sir?

Q Assuming that you were flying at this speed, that you testified to, would you have noticed or stopped for a [28] vessel or in any sense come back, to do anything with him, unless you had noticed in your over flight, that he was illegally fishing or breaking the rules; would you normally have bothered with him, if you had not noticed that he were not obeying the regulations, as you enforced them?

A Observation, only. As to it being illegal, to anchor a drift net, this would have been observed.

Q But you would have had to observe that he was doing something wrong, before you stopped him?

A Yes, sir.

Q So you would not necessarily have known if a Canadian or a foreign vessel were fishing, in the inlet, unless he were fishing illegally?

A Correct.

Q Going back, again, to the enforcement activity, over this single instance that you remember, was that an American boat?

A Yes.

Q Could you tell me who owned it; was it one of the canneries?

A It would be an assumption, on my part, at this time, but from my action I would say it was a Snug Harbor owned share boat, with Snug Harbor backers or cannery.

Q What?

[29] A I designated it to Snug Harbor. If it had of been a Kenai boat, I would have designated it to Kenai.

Q In other words, you would have called a tender?

A Yes; or have designated the boat to be taken to Kenai.

MR. BRADLEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Is a halibut boat in any way different from a salmon fishing boat?

A Yes, sir.

Q Did you observe any halibut boats, at all, in Cook Inlet, during your activities there?

A Yes, sir.

Q Generally, in what area of Cook Inlet did you observe them?

A Are you referring to fishing or observation of the boats?

Q I am referring to where you observed halibut boats fishing?

A In only one instance did I observe a halibut boat fishing, and that was in English Bay.

BY MR. BRADLEY:

Q Would you please mark that, on the map, in blue pen; why don't you make an X?

A An X circled?

[30] Q Fine?

A (Witness draws X with a circle).

BY MR. CRANSTON:

Q Aside from that X, within a circle, you observed no other halibut boats fishing in Cook Inlet, during your stay, there, is that correct?

A That's correct.

Q Were you able to ascertain the nationality of that particular boat, which you have indicated and placed an X, on the map?

A Yes, sir.

Q What was that?

A He was an American registered, out of an area southwesterly of Seward. He was a local resident and this was his normal fishing area. He was checked, for licenses and gear. This was accomplished, while I was aboard the surface patrol craft.

Q Did you make the area, over which you patrolled, known to any of your supervisors; in other words, did they know about your general patrol activities?

A All flights were authorized. The actual patrol route was at my discretion and the actual times and dates of partol were at my discretion.

Q Ultimately, did someone in a position of Holgar Larson or above know of the areas over which you patrolled; were [31] they made aware of your routes?

A No, sir.

Q Did they know, in a general way, what you were doing?

A Yes, sir.

Q Would they know, for instance, that you patrolled over the area on the map which you have outlined in red, indicating the drift net area?

A Yes, sir.

Q Did anybody, superior to you, ever object to the manner of your patrolling?

A No, sir.

MR. CRANSTON: I have no other questions.

RECROSS EXAMINATION

BY MR. BRADLEY:

Q Did you make daily reports to Holgar Larson, of the flights in the areas?

A No, sir.

* * * *

[3] DONALD J. SIMON,

Chief of Records Services Division, United States Department of State, a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q All right, would you state your full name, please?

A Donald J. Simon, S-i-m-o-n.

Q What is your address?

A 7504 Havelock Street, Springfield, Virginia.

Q And what is your age?

A Fifty.

Q What is your occupation?

A I am Chief of the Records Services Division and Records Officer for the Department.

Q And by the "Department," you refer to the Department of State, is that correct?

A Right.

Q How long have you had this position?

A Since 1957; fourteen years.

* * * *

[54] Q Now, Mr. Simon, one of my earlier questions to you related to Defendant's Exhibit 1, and the third paragraph of that exhibit which related to an extensive search of the records of the Department by the Office of Legal Advisor. I would like to have marked as Defendant's Exhibit 3 this typewritten list entitled "Records of Waters of Cook Inlet off the Coast of Alaska."

(Document marked Simon's Deposition Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q I will hand you what has been marked as Defendant's Exhibit 3 entitled "Records of Waters of Cook Inlet

off the Coast of Alaska" and ask you if these would be the files normally searched by the Office of Legal Adviser in order to determine the statutes of Cook Inlet as territorial waters and in order to form the basis of the response contained in the letters both of Defendant's Exhibit 1 and Defendant's Exhibit 2?

A Well, first off, I really don't know what the legal Advisor's office had searched because I have no idea of whether they have asked us to search this or whether they [55] searched it in their own office or whether they searched it with other offices. Nine years ago, I don't have the slightest idea. If they had asked us to search for it in our files, I would say yes, these are the places we would search for it.

Q In order to elicit the information contained in the Department's files sufficient to form the response contained in these two letters?

A I would say these places would be the logical places to search, yes.

* * * *

[3] JOHN B. SKERRY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A John B. Skerry.
Q And what is your residence?
A 4 Rackliff Street, Gloucester, Massachusetts, 01930.
Q What is your age now?
A Fifty-two.
Q What is your occupation?
A I am chief of the Division of Enforcement Surveillance for the Region 3 of the National Marine Fishery Service.

Q And how long have you been in your present position?

A Ten years.

Q Now, I am going to ask you a series of questions and mainly, so it is clear, I am not really taxing your memory but we have to get at some facts in this case and this is why you are here.

A All right.

[4] Q And what you are saying today is much as if you would be testifying in court if we were presently sitting before a judge.

A I understand that.

Q Before you took over your position in Gloucester, where were you stationed?

A I was stationed at Woods Hole Biological Laboratory in Woods Hole, Massachusetts, as a research biologist.

Q How long were you there?

A I was there approximately two years.

Q That would have been—

A From September of 1959 until February of 1961.

Q All right. Before you were in Woods Hole where were you stationed?

A I was stationed in Anchorage, Alaska, with the responsibility for the Cook Inlet District.

Q And what years were you stationed in Anchorage?

A I arrived in May of 1955 and remained there until late August of 1959.

Q And the agency for whom you worked at that time was—

A The Bureau of Commercial—

Q Named what?

A The Bureau of Commercial Fisheries at that time. The [5] Fish and Wild Life Service had been split into two bureaus, and at the time I was transferred there. In 1955 it became the Bureau of Commercial Fisheries.

Q And you stated that you were in charge of the district. Specifically, were you involved in enforcement and management or—

A I was involved in both. At the time of the split the fish and game agents or fishery game agents who had formerly been the enforcement personnel in charge of

fisheries enforcement also were retained for the most part by the other bureau.

Q By "the other bureau," what do you refer to?

A Bureau of Sport Fish and Wild Life. In those days they were Alaskan game agents. At that time Robert Mahaffey who had been in Bristol Bay was transferred to Cook Inlet. He transferred from the other side to our side and he headed up the enforcement in our area under my supervision. Bob remained with me for about, roughly, a year and a half, two years. He went back to University of Washington and subsequently transferred to Kodiak and was shot and killed.

Q Did you succeed, generally, to the same type of duties with respect to enforcement as Mr. Costello?

A I believe that I perhaps took over more responsibility than Mr. Costello had had. Mr. Costello had had the [6] benefit of the game management agents, primarily. He assisted with them. In our job descriptions as law enforcement officers, we had this responsibility, so that I had the management of the fishery, the biology of the fishery as well as the enforcement of the fishery.

Q All right. And you say you had this responsibility from May of 1955 through August of 1959?

A That is correct. I actually assumed my total responsibilities—Tom stayed on for the summer and departed Anchorage, I believe, in August of 1955. Then, I assumed a full responsibility for the district. Other than that, I had been under Mr. Costello's tutorage up to that point.

Q And you then went through and a little beyond the period of statehood?

A That is correct.

Q Who was your immediate supervisor?

A Howard Baltzo. And then I believe he was succeeded by John Gharrett for a short period of time before Mr. Gharrett became regional director. But Mr. Baltzo was my immediate supervisor. I took all of my instructions from him.

Q Did you, generally, in the day-to-day conduct of your duties look more frequently to Howard Baltzo than to anyone else? Would that be a fair statement?

[7] A I believe that would be a fair statement, yes.

* * * *

[12] Q During the time you were in the Cook Inlet District, were you aware or was there any map, chart, or other written document which defined the areas of your responsibility?

A The only thing that defined the area of responsibility was in the regulations. The area was defined and set out and this is all I had. This we put on a map each year. We had to depict the placement of all the traps on this particular chart. As I recall, the boundaries of the district were drawn in.

Q Now, by "the regulations," you are referring to the regulations promulgated under the 1924 Fisheries Act?

A Part 50, Section 101, I believe.

Q All right. Did you refer to that Act as the White Act, does that—

[13] A The White Act and the regulations drawn pursuant to the White Act.

Q All right. And you relied on the description of the Cook Inlet area as defined by the regulations?

A That is correct.

Q In order to discover the area over which you were to enforce the regulations?

A That is right.

Q Now, you say that there was a map or chart of some type with a line drawn on it defining or depicting the Cook Inlet area?

A It would be hearsay. That is all I could testify to.

Q Right. But, in other words, I am trying to determine if there was such a map in existence, and you apparently believe there was, is that correct?

A I heard of such but I never saw it.

Q I see. You never saw it. Trying to pin that down a little more closely, did you hear of it early in your career in Cook Inlet?

A No. Late.

Q Are you aware or were you told anything about who may have prepared such a document?

A I was told who had been working on it, yes.

[14] Q Who was that?

A Clay Scudder.

Q Do you know anything about the present whereabouts of Mr. Scudder?

A I don't. Mr. Scudder retired while I was in Alaska and the last I knew he was residing in California but this is 15 or 18 years ago, so—

Q What was his duty at the time you were in the Cook Inlet District?

A Clay had had many years in Alaska and he was helping Mr. Baltzo in the day-to-day activities in the regional office. I can't be precise on exactly what his duties were. He was, I know, stationed in Juneau. My association with him was not really on an official basis. I knew him more on a friendly basis. I don't feel that I am qualified to describe precisely what his duties were.

Q Did anybody else of whom you are aware work on the preparation of such a map?

A No. I can't truthfully say that I know definitely for sure. Here again, I understand that John Gharrett, from time to time, worked with Mr. Scudder, but this, again, is only hearsay. I cannot, of my own knowledge, say definitely that I know he did.

* * * *

[16] MR. CRANSTON: I will ask that the reporter mark as Deposition Exhibit 1, United States Coast and Geodetic Survey Chart 8502, 16th Edition, July 4th, 1970, corrected through notice to Mariners 27/70.

(Survey Chart marked Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q All right, Mr. Skerry, I will hand you what has been marked as Deposition Exhibit 1 and ask if included within the portion of the map available to you is the district in which you had responsibility when you were in Anchorage?

A Yes.

Q And I also take it that you are familiar with the portion of that map upon which the words "Cook Inlet" appear?

A That is correct. I am not familiar with this chart, particularly. We had two other charts we used but this is adequate to show the area of Cook Inlet and its surrounding territories.

Q Now, generally, in regard to your enforcement of the White Act and the regulations promulgated under the White Act with respect to fisheries, exactly what did you do? How [17] did you go about enforcing these laws? I am not talking so much about laws involving stream guards and that sort of thing, but out in the water. What did you do, how did you conduct your activities?

A You are talking, then, primarily about the drift gill net fishery, I assume. Regulations were set up for the drift gill net fishery in that they were only allowed to operate in a stated area. The other fisheries were essentially a close-in-shore fishery. The drift gill net fishery could fish further off shore by the very type of gear it is. The area open to drift gill netting was north of a line drawn from Anchor Point across. In other words, a parallel to a parallel at Boulder Point which is above the East Foreland. So that the drift gill net fishery, then, the only type of mobile gear allowed in that particular part of the Inlet was restricted to those two—actually, it was divided into two areas, North Central and South Central Districts, and commencing about the 15th of May, depending exactly on the date when the fishery was allowed which could be the 25th to the 27th of May, we commenced patrolling it by aircraft, primarily, and if a vessel were available, which it was in the latter years, we used a small 38-foot patrol vessel primarily to see that no fishing was done below the latitude of Anchor Point.

[18] Q Let me stop right there, if I may, Mr. Skerry. What was the purpose in drawing the line at Anchor Point, from Anchor Point to the opposite shore?

A Well, that line had been drawn, I won't say how many years, before I appeared on the scene. It was there when I got there. It was probably done on a biological basis. Below Anchor Point tended to be a general mixing ground for salmon and we were managing

a fishery on a river-system basis, and by fishing intensively below Anchor Point where you had a large mixing area and before fish were starting to head either up the west side or the east side of the Inlet for their home streams, we would have had no opportunity to determine the parent stream for which any particular fish was headed for.

Q In other words, the runs didn't particularly coalesce below that point?

A No, they did not. As I say, it was a tremendous mixing bowl. The fish came in, apparently from our observations of jumping fish, and remained there for a period of time. It was the lower part of the Inlet which was somewhat clear. Cook Inlet, being sediment laden, it is very difficult to see fish at any time. But the lower part of the Inlet was somewhat more clear than the rest. We couldn't follow the movement of fish too readily, and so that when the fish [19] started to move they would move more or less in groups bound for the one or two streams, and if we had let them fish with no regulations below that line, we would have had no stream management whatsoever.

Q You are saying, then, that you did consider it your responsibility to prohibit fishing with any kind of gear in all of the waters south of the Anchor Point line?

A For salmon, correct.

Q For salmon?

A That is correct.

Q All right—

A The only other type of gear, of course, which was permitted were the beach seines but they are strictly a shallow water type of gear and they fish very close in. They did not fish out in the deeper water as you found out here in the middle of the Inlet.

Q Did you patrol the area south of the Anchor Point line in order to determine that the regulation prohibiting fishing was being complied with?

A I did.

Q And over what portion of that area did you patrol?

A I would say that from Chinitna Bay to below Augustine Island, and across to Port Graham and back to [20] Anchor Point. We patrolled that area quite thoroughly. About the only time that the salmon would be close enough to the surface to be caught by a gill net was above that area. Below that area they were in such deep waters that a gill net would not have caught them successfully. So we, therefore, tended to devote most of our patrol time to the area in which fish could be caught. I would judge that for the four or five days prior to an opening we would spend probably the minimum of three to four hours a day patrolling with the aircraft to be sure it was completely free. This is dependent upon the weather, of course.

Q Would you consider it your responsibility in this area to determine that all areas of the Inlet were free irrespective of the distance from shore?

A Remembering that there are personal-use laws in Alaska and use of set nets along the beach were permitted up until a period before the season opened and then they had to be discontinued until the season opened.

Q But principally with respect to drift nets?

A To drift nets, the area we covered primarily would be from shore to shore in the lower portion of the Inlet as I have described it and on up to at least the Forelands. We stopped at the Forelands primarily on account of the tidal [21] bases. It was practically impossible to put a drift net up there.

Q Then, I take it that you did patrol that area even outside the distance three miles from the shore in order to insure compliance with the drift net laws, is that what you testified?

A That is correct.

Q And I believe you also testified, to make the record clear, you considered the area of your control or responsibility the area of Cook Inlet as defined by the regulations?

A That is correct.

Q Do you recall specifically what the southern boundary of the Cook Inlet area was as defined by the regulations? I am not testing your memory.

A Cape Douglas to the Barren Islands to Point Gore.

Q And you considered that entire area within your control or responsibility?

A That is correct.

Q You patrolled the entire area with aircraft and vessels?

A That is correct.

* * * *

[24] Q Can you recall any specific instances where you or persons operating under your supervision made arrests or investigations or some other law enforcement activity with respect to the off-shore salmon fisheries in Cook Inlet?

A No, I do not.

Q You cannot recall any specific instance of any type of enforcement?

A By "off-shore," you are referring now to beyond the line of the Douglas, Barren Islands—

Q No, I am referring to off-shore, meaning distinguishing the set net fish trap type of fishery from the drift net, [25] gill net type of fishery. In other words, within the Cook Inlet District can you recall any specific instance of enforcement with respect to drift netters, gill netters?

A Well, we have had trouble with gill netters, for instance, drifting too close together, if this is what you are referring to, out here in below Kalgin Island and even up along by Kalgin Island. We have investigated alleged fisheries violations in Kamishak Bay by beach seines and around the stream up here at the head of Kamishak Bay.

Q All right, now, you pointed to enforcement against drift netters in the vicinity of Kalgin Island and southerly thereof?

A Correct.

Q Can you recall any specific instances, names involved, of persons whom you may have apprehended?

A I can only recall one particular instance, and I can't recall the names of people involved here in which Mr. Wardleigh and I found a group of gill netters just below Kalgin Island fishing too close together. There was a stated distance the nets had to be apart and these nets had drifted together. So, we put the plane down on the water. It happened to be a calm day. We taxied through the six or seven boats involved and simply told them to haul their gear [26] aboard their boat or to tow it away.

Q Were any arrests made?

A No, I made no arrest at that time.

Q Was Holger Larsen under your supervision?

A No, he was not. Holger Larsen had been in charge of the enforcement prior to my coming there but, as I say, at the time when the two bureaus were formed, the Fish and Wild Life Service was split, Holger Larsen stayed on the other side of the fence and as a game management agent. We then took over the enforcement work which his agents had been doing.

Q Apart from this one instance where you and Wardleigh put the plane down, are there any other specific instances you can recall?

A This is the only specific instance, time that I can recall having done that sort of an action. The other actions where we put the plane down were primarily concerned with set nets on the beach or with traps. We had a patrol boat in the vicinity when the red salmon fishery took place. As a matter of fact, we had two. We brought The Teal in specifically at that time and we had the use of The Grayling, of course, continuously. So that, really, the only time that we may have had any difficulties below Kalgin Island was during the king salmon season which would have been late May or early June. The rest [27] of the time it was a matter of patrolling along the beaches with the skiffs from The Teal and the stream guard at Drift River.

Q Would it be a fair statement to say that the drift netters basically presented you with little enforcement problems?

A I had little or no enforcement problems in particular. It was mostly our presence on the grounds, like

the cop on the beat, that people behaved themselves.

Q Now, can you recall this one instance where you put the plane down was more than three miles from any point of land or not, or would this have made any difference to you?

A This wouldn't have made any difference, I don't believe. I can't recall precisely the exact spot in the Inlet where we did intercept these vessels. I do recall it was just a short distance south of Kalgin Island. That is about as much as I can recollect of the incident.

Q But it could or could not have been more than three miles. You just can't remember?

A I just couldn't precisely tell you.

Q Did you enforce any type of law or regulation or other requirement requiring that persons engaged in the fishery be registered or licensed? Was there any—

[28] A Yes. If you are talking again about the salmon fishery, in about 1957 a law was required that each vessel owner or company owner of a vessel to denote which district they were going to fish in and we issued them plates accordingly. And we managed the fishery on the amount of gear that was actually fishing, whether it was traps, set nets or drift gill nets.

Q Are you saying that if a person were to engage in the salmon fishery he would have to decide among all of the districts in Alaska which district he wanted to fish in for that particular season?

A Yes. Well, too much pulse fishing. In other words, fishermen going from area to area to area subjecting the fishery to too much gear and we had to do something to stop this pulse fishing, and it seemed one of the best ways we could determine at this time was to have the fishermen choose an area in which he wished to fish and remain there for the remainder of the year unless there was some hardship case or the utter and complete failure of a fishery so that a man's livehood was completely lost. Then, he was given the opportunity through procedures set up to move to another district.

Q Now, could any number of individuals register, say, for instance, to fish the Cook Inlet District or was there

a [29] number of persons beyond which you would not allow further registration?

A Anybody who wanted to fish could come there and fish. We did not attempt to stop anybody. When they were all done registering, then we added up the amount of gear and then told them how many days they could fish. In other words, the amount of fishing time was set, depending upon the amount of gear used to fish.

Q Would you have required, for instance, if a foreign vessel wanted to fish Cook Inlet with gear, would they have been required, also, to register?

A He wouldn't have been allowed in there in the first place. He could have come in Force Majeure or something of this sort. But to fish, no.

Q What is the basis upon which you make that statement?

A Well, to my knowledge, there is no law that I can recall precisely, but foreign vessels were not permitted to fish in the lines as drawn on this—set out in the regulations. In other words, we considered that that was Cook Inlet and it was for American fishermen.

Q All right. So, you are saying that in regard to this registration map, had they applied for a—did you call [30] this a license or how did you refer to it?

A I think we called it a registration. I am not sure. Registration.

Q Had a foreigner applied for a registration you would not have given it to him because he could not have fished there under any circumstances?

A In the first place, I wouldn't have said yes or no to him. I would have referred that question to Juneau and let them make that decision. It would have been an international affair and I don't think that I would have wanted to have been drawn into something like that at that time.

Q But it was your impression that they could not have fished there, is that correct?

A That is correct.

Q With respect to foreign fishing, were you aware or during the time you were on the Cook Inlet District, did any foreign fishing vessels appear on the scene?

A Not to my knowledge. I can't state categorically that I knew some vessels of foreign registry who were fishing in the waters of Cook Inlet.

Q You say you can't state?

A I cannot.

Q I take it, then, that you are not aware that any did [31] at any time when you were there?

A I can't recall. I think what you are perhaps thinking about is the possible if some Canadian long liners were fishing for halibut. I have no knowledge that any Canadian long liners did, in fact, fish in the Cook Inlet area. I know they came in Force Majeure as any other vessel is permitted to do. To fish, I can't say.

Q What do you refer to when you speak of Force Majeure?

A I am talking about conditions of storm and wind, when winds get to 60 knots or more.

Q In other words, it is something where the vessel is in peril and has to come in to shore for its physical safety?

A Right.

Q When you took over, then, I take it that you were not given any instruction by Mr. Costello or anyone else with respect to what procedures were to be followed if a foreign vessel should appear fishing in Cook Inlet?

A I can't recall any procedure being given to me either verbally or in writing. If there were any, I would judge that I would immediately refer the question to the regional office in Juneau.

Q But then to your knowledge, there was no firm decision which had been reached on the point?

[32] A Not to my personal knowledge, no.

Q Were you ever told by anyone that Howard Baltzo had made a decision relative to this point?

A No.

Q Involving foreign fishermen?

A No.

Q Did Mr. Swanson or Mr. Ralston ever communicate to you any instructions on this?

A No, I was never under their jurisdiction.

Q I see. What were their responsibilities when you were in the Cook Inlet District?

A Here, again, they were in charge of the game management agents stationed in Juneau and I believe that Dan Ralston was the assistant regional director with Clarence Rhode at that particular time.

Q If any decision on this point had been reached, would it most likely have been communicated to you from Howard Baltzo?

A I think this would be the way it would have come down. In other words, it would have been formulated by Mr. McKernan and his staff and Mr. Baltzo as my supervisor would have referred it to my attention.

Q I take it, then, you are not aware that any [33] Japanese vessel ever appeared in Cook Inlet? You have no knowledge of such?

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EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

Q Mr. Skerry, this is cross-examination. I only have one or two questions to ask you. The first question is when you have your agents in the field, say, in an aircraft, patrolling, can they communicate directly with people in Anchorage and in Juneau—

A Yes.

Q —if they had any questions?

A We had two frequencies we used. If we were blocked for some reason from going through directly we could go through the station at the hangar through a relay.

Q Hangar located—

A At Anchorage; our hangar headquarters. And they could communicate directly by radio. Or if something prevented that, why of course, then, they could telephone. So we had [34] communications from the aircraft.

Q I am right in saying you had direct communication to Anchorage and the Juneau?

A That is correct.

Q If a pilot on patrol saw foreign vessels fishing in Cook Inlet beyond three miles what would he do?

MR. CRANSTON: I will enter an objection. There is no evidence in his direct testimony that such a vessel had ever been seen in Cook Inlet.

MR. RASHKOW: Answer the question, please.

THE WITNESS: Could I have the question re-read.

(The question was read.)

THE WITNESS: He would have done one of two things; he would have either communicated directly to me at Anchorage, if I were there, or in my absence would have directed his communication directly to the regional office in Juneau which I would ultimately have had to do, also.

* * * *

[2] THERON A. SMITH

having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Smith, would you state your full name, please and your residence address?

A Theron A. Smith, 1500 West 30th Place, Anchorage, Alaska.

Q And what is your date of birth?

A August 11, 1918.

Q What is your present occupation?

A I'm supervisor of aircraft operations, Fish and Wildlife Service.

Q That's for the United States Government?

A That's right.

Q And how long have you been engaged in this particular position?

A Since November of 1948.

Q And always with this same title?

A Yes, sir. Well, the title has changed subtly, but the job has remained the same.

* * * *

[4] Q All right. Generally, with regard to your occupation since '48 up to the present time, what has been the area, geographically, with which you are concerned?

A In my job, I'm concerned with the whole State of Alaska. I manage the fleet, I fly throughout Alaska. I'm responsible for pilot proficiency, aircraft maintenance, for the [5] operation of what we call fish and wildlife aircraft.

Q And have you had the responsibility for the entire state, or the territory before statehood, since '48?

A That's correct.

Q And in regard to these responsibilities, has anyone under you been particularly responsible for what we would broadly define as the Cook Inlet area?

A We employed various pilots and assigned them to operate in various districts, but this is a flexible assignment, they might be assigned for a brief period, or for years or more. No pilot had a district responsibility beyond transportation or beyond flying in the district, and he might be replaced by another pilot.

Q What do you mean, "had no responsibility beyond transportation"?

A Well, our aircraft operation is a transportation function of the service. We manage the operation of the aircraft, we train the pilots who may or may not be division pilots, they may be agents or biologists, and we fly the aircraft for these people.

Q I see. Now, have you flown the aircraft yourself—

A Yes.

Q —at times? Do you do it all the time or—

A Yes, quite consistently. In a general way, you might say that in the earlier history of the operation, I flew a lot [6] more than I did during, say, the period immediately before statehood when we were a larger organization and more organized, more pilots. Following statehood, I again flew a considerable amount because of reduction in our people.

Q Now, prior to statehood when you were flying, where did you fly, generally?

A More in this area, more in the—you might say the Cook Inlet or southcentral coast district than in other parts of Alaska, although I did fly in all parts.

Q Taking the period from 1948 up through statehood, how would you characterize the intensity of your flying, that is, how often, generally, were you out flying in the areas of your responsibility?

A I would say—

Q Was it weekly, monthly?

A No, it would be almost daily, several times a week on the average, probably four days a week, on the average.

Q I see, and this is week in and week out from '48 through statehood, you would say?

A Yes.

Q All right.

A It would vary some from time to time. There were periods when I would fly every day, weekends and all, all summer long, essentially.

Q All right, now, as best as you can, what percent of this [7] flying that you did, say, four days a week, or so, what percent was done in the Cook Inlet district? Would you say more than half?

A I believe so. I probably flew more fishery patrols for more Cook Inlet activities or coastwise activities than otherwise, because I would normally fly a Grumman, and the Grummans were more on this work. We had single engine equipment and this sort of thing. The interior operations would be conducted more with single engine aircraft. Our coastwise and fisheries work was more with Grummans, and of course, the higher percentage of my flying was these Grummans.

Q I see. Now, so you did most of your flying in the coastwise and fisheries areas, is that correct?

A More than half, I'd say.

Q All right. Now, when you speak of coastwise and fisheries, what areas there did you fly, what districts?

A It would be mainly what you would consider this district, and it would be, say, from Seward to Cape Douglas or Northern Shelikof area and Cook Inlet.

Q Now, by "this district," what do you refer to?

A I don't know how the fishery district—or how the thing is legally divided up, but we had aircraft stationed at Cordova, for instance, at Kodiak, at Anchorage, King Salmon, and at times at Sand Point or Chignik, and these aircraft would [8] generally operate in an area within reasonable radius of where they were based.

Q Now, for, say, flying the area of lower Cook Inlet, where would the aircraft be based?

A Here at Anchorage.

Q At Anchorage. And would you say that of the flights which you made in the fisheries aspect of your duties, were most of your flights originating in Anchorage, or were they originating elsewhere?

A They would originate here for the most part. We would remain overnight in Seldovia, or possibly in Seward, Homer, occasionally, but the aircraft was based here, the operation was based here.

Q I see. And again, when you speak of the "operation," this was the operation of which you were the supervisor, is that correct?

A Right, and essentially the base of the people we were transporting, the agents.

Q All right. Now, when you speak of transporting agents, do you mean that you transported them from Anchorage to some other locality where they would be stationed, or you transported them in the airplane in order that they could observe the fishing activities in the area?

A It was primarily patrol, although there was a defense part. In other words, we transported them to a great extent for [9] visual patrol.

Q I see. In other words, a flight would originate in Anchorage, you would transport them on this flight, and you would terminate, say, in Anchorage, perhaps?

A That's right.

• • • •

[10] Q Was Howard Baltzo his deputy at any time during your service here?

A Yes, he was.

Q Did you ever take instructions, or look to Mr. Baltzo for direction?

A Yes. I don't remember specific instances, but he was the assistant regional director, I believe was the title. In other words, he was Rhode's immediate assistant, and I'm sure we have correspondence and various other things with his name on them, and he was the regional office, as far as we were concerned.

* * * *

[23] Q During your period of operation in this area since 1948, have you become at all acquainted—and I'm dealing with prior to statehood—were you acquainted at all with the fishery laws which were in existence prior to statehood, that is, the federal fishery laws, and their provisions, as they would apply in Alaska?

A I was aware of this to a certain extent due to association with the management-enforcement people, but I recall nothing of the details in a—

Q Did you ever make any independent study of these laws yourself?

A No.

Q And did you ever have any instruction in them?

A Very minor instruction, you might say.

Q What would that have consisted of?

A Oh, just explaining the generalities of the law, possibly.

Q You mean one of the enforcement officers would have instructed you as to the generalities in the law?

A Yes. We would have annual get-togethers in Fish and Wildlife, and there would be certain, you might say, discussions concerning this where we might all be present.

Q These would have been informal discussions or formal [24] discussions?

A Well, they'd be formal for the agents and so forth, and the rest of us would be—would sit in, but this was not our field, and we—not my field, I mean. I had my hands full transporting these people.

Q All right. Did you, yourself, ever sit down and read the regulations or the laws which may have applied—

A No.

Q —in regard to fisheries?

A No.

Q And did you, yourself, ever try to determine, by yourself, or in your own mind, for any violations which may be occurring?

A No. We didn't operate independently.

Q In other words, you always generally, when you were flying, is it fair to say, you were always flying in the company of either an enforcement officer or biologist that you were transporting?

A That's correct.

Q And you simply relied on what that person you were transporting was supposed to do, and did nothing independent in regard to enforcement on your own?

A That's right.

Q In any of the discussions which you had with enforcement personnel or any other personnel of the federal government [25] prior to statehood, did the matter of the area over which enforcement was to be carried out, was that matter ever discussed?

A I'm not sure.

Q Well, did it ever enter into any of your discussions, say, in regard to Cook Inlet, the areas of Cook Inlet over which the fishery laws and regulations of the United States were expected to be enforced, or were, in fact, enforced?

A No, not to my knowledge. In our mind, the area were the areas of operation of the aircraft, and we could operate across areas that might have different basic regulations and this sort of thing, but I would not know this.

Q Did you ever discsus with anybody else the matter of enforcement of fishery laws and regulations in any part of Cook Inlet?

A Well, I'm sure we did at times, but I can't recall any specifics.

Q Were any charts, maps, documents or any other kind of written material ever given you, or did you ever see any such material defining the areas in Cook Inlet over which fishery laws were to be enforced?

A I don't recall specifically any maps or charts or information that would be specific. I mean, we naturally

had all manner of charts and things, the fishery people had charts and so on aboard.

[26] Q But nothing you're aware of which specifically defined the territorial jurisdiction of the United States in Cook Inlet?

A That's correct.

Q Did you ever receive any written communicaiton or send any written communication on this subject?

A No.

MR. CRANSTON: Let's go off the record just for a minute.

(Off the record.)

MR. CRANSTON: Would you mark this (indicating) document, C & GS chart 8502, 16th edition, July 4th, 1970, corrected through NM 27-70, as Deposition Exhibit 1, please?

(Deposition Exhibit 1 marked.)

BY MR. CRANSTON:

Q Mr. Smith, I'm going to hand you Deposition Exhibit 1, which is, as I said, U. S. Coast and Geodetic Survey Chart, and ask you if the area of Cook Inlet as set forth in that map is one of the area over which you have and did have territorial responsibility?

A Yes.

Q And generally relating to geographical features as shown on Deposition Exhibit 1, would you indicate where within the confines of the Cook Inlet district you patrolled your aircraft, particularly with regard—I'm not interested in [27] Prince William Sound or that area, but generally in the areas of the Kenai Peninsula and lower Cook Inlet—where did you transport?

A We normally operated throughout the entire Cook Inlet, and possibly or generally in the neighborhood of Cape Douglas in the southwest, and we went coastwise to Resurrection Bay and somewhat eastward.

Q I see. Now, did you carry enforcement personnel on any of your aircraft in the area between Cape Douglas and either Cape Elizabeth or Point Gore?

A Let me determine for sure where Point Gore is, now—yes.

Q And were you ever personally involved in any flights in that area where enforcement personnel were present?

A Yes.

Q And what were the areas, say, in the general area between Point Gore, Cape Elizabeth on one side, and Cape Douglas in the area in which the enforcement personnel were interested? I mean when were they observant?

A To the best of my knowledge, they were observant all the time in the total coastal water area.

Q Well, now, when you're speaking of "coastal water area," did you or anyone with whom you are familiar consider the waters between Point Gore or Cape Elizabeth on one side, and Cape Douglas on the other, as the coastal water area? Did you treat that, say, as the coastline?

[28] A I don't know. Could I enlarge on that just a little bit?

Q Yes, you may.

A As far as I can recall, and as I am concerned in my part of this, that the whole water areas of Cook Inlet and to some distance offshore along the outside coast and so on, were the same, I mean you patrolled them the same. I don't know if the agents were looking for any different things in different areas.

Q But you would say you patrolled the area midway, say, from a line between Point Gore and Cape Douglas, and say midway up the inlet to Anchor Point and beyond, just as you would have patrolled the shoreline on the south and east sides of the Kenai Peninsula to Resurrection Bay?

A To the best of my knowledge.

Q Generally, when you were patrolling on the south and west sides of the Kenai Peninsula, did the aircraft stay relatively close to the shoreline?

A It would depend on what we were looking at, I mean if we were looking at set nets, we would be right on the shore. If we were looking at drift boats or any

other ships or anything, we would be over where they were.

Q And where would they be? And again, refer to that map with specific reference to geographical features, if you can. This aids the transcription of the deposition, so we know what you're talking about.

[29] A I can't say in any general way, except that the ships were further offshore than the nets, as far as—

Q Now, what do you mean by that?

A Well, the nets were attached to the shore. As I remember, we had two kinds of gear which we were looking at, either drift boats or various other boats. We looked at boats, and generally, we looked at any boat that we saw, we identified it. We were involved with looking at any vessel traffic and at set nets, generally.

Q And drift nets, you say?

A Well, drift nets would be attached to ships.

Q I see. Can you recall specifically whether there was any active drift net fishery in an area, let's say, to the east of the Chugach and the Barren Islands, as disclosed on this chart, and south of the shoreline of the Kenai Peninsula?

A I think generally not, or—I would say generally not.

Q So is it fair to say, then, that most of your patrols would have been in that area east of the Chugach and Barren Islands and south of the Kenai Peninsula closer to shore than in the Cook Inlet side of the peninsula?

A Yes, I believe it was normal for the drifters that's on the fish in the bays.

Q All right. Now, generally, if you can remember from your flights in that area, where were the drift net fisheries conducted in the Cook Inlet area, where did you observe most [30] of the drift net fishery?

A As I recall, they would be more south of Kalgin Island.

Q And where in relation to the shoreline?

A Not close to shore. I don't know how close. I think there was some prohibition against them getting very close to shore.

Q Would they have been, say, do you recall any towards the middle of the inlet?

A Yes.

Q And what was the southern limit, as far as you can recall, of the drift net fishery, if you can remember?

A Oh, possibly somewhere west of Port Graham or Seldovia.

Q West of Seldovia?

A Well, I don't recall for sure. We would pick up ships in various locations at times, whether or not they were fishing. By this I mean we would sight them and look at them.

Q Now, when you were involved in transporting enforcement or other personnel over the area of Cook Inlet —let's take north of a line from Cape Douglas through Point Gore on the Barren Islands, did you observe any halibut fishery?

A I don't recall.

Q Could you, from your own experience, distinguish a drift net fishing vessel that was engaged in the salmon fishery from one engaged in the halibut fishery?

A I used to be able to tell the difference.

[31] Q Well, could you have told the difference in the period from 1948 through statehood?

A Yes.

Q And can you remember if you saw or observed any halibut boats in that area of Cook Inlet?

A I can't remember specifically.

Q You can't remember any specific instance?

A No.

Q This isn't to say there weren't any, you just can't remember whether there were or not?

A I wouldn't be able to say whether there were or were not any.

Q All right. But you can remember specific instances where you saw drift netters in that general area?

A Yes. They work the majority of the ships in the south.

Q Now, I know I'm pressing you a little hard in maybe touching your memory, but what was the farthest south that you can remember ever having seen a drift net boat?

A I have no good recollection of the line or anything.

Q But as you said it earlier, you could have seen one as far south as Selvodia?

A Yes, and I think possibly even a little further south, even, but I can't say for sure.

* * * *

[36] Q Okay. Is it a fair statement, and if it isn't fair, be certain to tell me that it isn't, that you did participate in apprehension of vessels, that is, participate in transporting enforcement officers in apprehensions of vessels even in the inlet more than three miles offshore south of Anchor Point?

A You mean to be specific that we did apprehend vessels south of Anchor Point more than three miles offshore?

Q Yes.

A I can't be that specific. I think so, but I can't say for sure.

* * * *

Q And you described an incident with Dale Cheek whereby you thought perhaps a packer ship had come into the inlet and Holgar Larsen was involved?

A Yes, we were talking about the same incident.

Q All right. When you were talking about this with Mr. Cheek, did you use as a reference point Anchor Point?

A I don't recall if I did.

Q I see. Can you recall specifically what you told Mr. Cheek concerning this incident?

A No, except I believe I told him that I had put Holgar Larsen aboard a large—in the inlet. I don't remember even what year it was, or anything, as far as that goes. As I mentioned, I remember this specifically because of the difficult circumstances of the airplane.

Q And do you remember enough to feel that this event could have taken place south of Kalgin Island rather than north of Kalgin Island?

A I couldn't swear to that, but I think it was north of Kalgin Island.

* * * *

[39] Q During your acivities prior to statehood, and again, limiting your area of concern at this point to a line from Cape Douglas through the Barren Islands to Cape Elizabeth or Point Gore, do you remember having seen any foreign fishing vessels, by foreign, I mean flying a foreign flag, anything of this sort, foreign fishing vessels in Cook Inlet north of that line which I described?

A My memory would be possibly unreliable, but I think we did see Canadian halibut ships.

Q All right, these would have been Canadian halibut ships?

A Whether or not they were fishing or what, I don't know, but [40] I think we occasionally saw Canadian ships.

Q And can you specifically remember enough about the events as to where you might have seen them?

A No, I can only recall that I think we saw Canadian ships at times.

Q Can you be certain of this?

A No, I couldn't.

Q I see. Can you recall that any of the personnel whom you were flying made any particular comment to you as to the existence of any foreign fishing vessels in Cook Inlet?

A No.

Q If you were to try to estimate—again, I'm not just putting you through a memory test, but we're trying to get at some facts that may not have been very well recorded at the time—if you were trying to estimate the number of times you remember having seen a Canadian halibut boat, could you make a rough estimate?

A All I could say was I think sightings would be rare. We were involved, I think, for the most part with nationls.

Q And by such sightings being rare, would you say it was less frequent than one a year over your averaging from 1948 through statehood?

A It would be difficult putting a number on this.

Q Well, by rare, I would assume that it means at least less frequent than, say, once a week?

[41] A Yes.

Q Or once a month, even?

A All I can say is that vaguely I remember, or think I remember, that we occasionally saw Canadian ships.

Q Do you think you saw them as frequently as once a year?

A Possibly not.

Q Was it such a rare occurrence, do you think that if one had been sighted that a note would have been made on some record somewhere by someone, about it?

A I think so.

* * * *

[42] Q Let me ask you this: If this had happened, would it have been an occurrence of enough significance that you would have entered it on your flight card, that is, if a foreign vessel, you'd actually participated in the apprehension in some way of a foreign vessel?

A Probably wouldn't have noted it except to note a landing.

Q All right. I get through this mainly that your procedure when you make out these flight cards, even if it had been a very significant event, so far as from an enforcement agent standpoint, again, all you would have noted would have been the landing and the takeoff, because this is the area with which you are concerned?

A That's right.

Q In fact, you could have noted a Russian submarine going up there and landed and stopped, and you probably would have noted the landing and takeoff, and that would have been it?

A Yes.

* * * *

[44] Q Do you recall any discussion with Mr. Baltzo concerning the possible existence of a Canadian vessel in Cook Inlet?

A No. I don't remember discussing any specific cases or ships or any—I can't remember discussing anything with Baltzo except aircraft policies or aircraft operation details, or things like this.

Q You didn't discuss the sightings of any particular vessels [45] with him?

A Not that I can remember.

Q Did you discuss the instance that you're referring to which you stated in this deposition occurred north of Kalgin Island, with the difficult takeoff, did you discuss that incident with Mr. Baltzo?

A I can't recall.

Q You say Holgar Larsen was with you in that event. Would he have discussed this with Mr. Baltzo. Would he have been in radio contact during this time with Mr. Baltzo?

A I'm sure that he would have discussed this with someone.

Q By someone, do you mean someone in Juneau?

A I believe so. All I recall is that there was some concern about this ship. I mean that's one of the reasons that there was a certain amount of risk-taking in getting to it.

MR. CHARNEY: I'd like to state an objection to this. I know that it is a discovery deposition but it is testimony as to anxiety about this ship, I think that's hearsay.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q Are there any other instances that you can recall when you did land in Cook Inlet anywhere as it's set forth on that map in Cook Inlet, and the enforcement agent aboard discussed the situation with Junean?

A No. I can't be sure that this other landing resulted in a [46] discussion with Juneau.

Q Well, now, by your answer, "No," do you mean that in all other landings which you participated in involving the apprehension of a vessel, that the situation then at hand was not discussed with Juneau?

A I can't say how much discussion there might have been with Juneau, or with higher authority in enforcement on any case.

Q Well, by discussion, I mean there at the scene with your or someone else's radio equipment.

A I don't know. We talked to various base stations and to vessels all the time. I don't know. I don't recall any specific urgency, even with this other landing. I

can't remember that we talked to Juneau specifically on the radio or any such thing.

Q Did you keep a radio log?

A No.

Q Was there any way in which radio communication between your craft and other places was noted in any kind of log other than—

A Yes, stations maintained a log. This is a requirement that we accomplished although it's a very short-term log. I guess it's discarded in a matter of weeks.

Q What do you mean by a "station"?

A Any ground station that we would operate, such as our [47] Anchorage base station, our Juneau station, our Kodiak station, any base station.

Q But your planes were not considered a station at this point, is that correct?

A No, it's not required, not common to log any radio traffic in an airplane.

Q I see. And the logs of the ground stations, you say, are discarded almost immediately, you wouldn't have any logs back prior to statehood?

A We certainly wouldn't on aircraft. I doubt that these would exist because there's no requirement.

Q Okay. Have you ever discussed—well, let me go back to one other question: Are you familiar with any instances in Shelikof Strait involving the apprehension of a Canadian halibut vessel sometime from the early through mid-'50's?

MR. CHARNEY: I object to this as being irrelevant.

MR. CRANSTON: He hasn't told you you can't answer this.

A I don't know. I don't have any recollection of it.

BY MR. CRANSTON:

Q Did you ever carry personnel down into Shelikof Straits?

A Not particularly. We might—I think the southern line on our patrols would vary. I think our patrols were geared to what the activity was.

Q But you cannot recall any instance of a Canadian halibut boat being apprehended in the 1950's in Shelikof Strait?

[48] A No.

Q Do you know a man by the name of McKinley, were you familiar with him, an enforcement officer?

A No.

Q Or did you know Howard Marks, are you acquainted with him?

A I know the name, is all.

Q I see. But you never discussed with a man by the name of McKinley or Howard Marks any incident involving a Canadian vessel in Shelikof Strait?

A Not to my knowledge.

Q Or Jim Branson, did you ever discuss it with him?

A I can't ever recall discussing such with Branson.

Q Okay. Have you ever discussed the status of the area of Cook Inlet north of a line from Cape Douglas through the Barren Islands and on to Point Gore or Cape Elizabeth? Have you ever discussed the status of that area as to territory or jurisdiction of the United States with anyone?

A I believe not.

Q You believe not? Is it possible that you have?

A That's hard to say. A lot of things come up in conversation. I don't know.

Q Well, can you remember specifically any time that you may have discussed this with anyone?

A No.

Q I see. And conversely, then, I suppose it's fair to say, [49] or is it, that no one has ever discussed it with you?

A I can't be sure of that.

* * * *

[2] EARL SOLIE,

called as a witness by and on behalf of the defendant, having been first duly sworn by the notary public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Earl Solie.
Q What is your address, Mr. Solie?
A 1752 Ventura Drive, Tacoma, Washington.
Q What is your age?
[3] A 45.
Q What is your occupation?
A Elementary school principal.
Q How long have you been engaged in that occupation?
A 22 years.
Q Have you ever been engaged in the occupation of commercial fisherman?
A Yes.
Q Have you ever engaged in this occupation, in Cook Inlet, Alaska?
A Yes, I have.
Q When did you commence fishing, commercially, in Cook Inlet?
A From the best records I can come up with, it would be 1951.
Q Have you fished, there, since 1951?
A Yes; almost consistently, with the exception of two years off, when I was going to school, and two or three years, in the army.
Q What period of the year do you fish, in Cook Inlet?
A Every summer, from June and through July and August.
Q Are you interested in any particular fishery, there?
A An organization you are referring to, as a fishery?
Q No. What type of fishing?
A Oh, all right. Commercial salmon fishing.
[4] Q And with what type of gear?
A Drift gill net.
Q How is the drift gill net fishery carried on; what do you do and what means do you use?

A We are allowed to put our net into the water and then we drift more or less with the tide and the weather. In other words, the wind may be prevalent and make us go east and west, contrary to where we may wish to go. The Inlet, we will say, is north and south and as the tide goes south, we go south, and as the tide goes north, we go north.
Q With relationship to the shore line of Cook Inlet, where is this fishery carried on or where do you fish?
A Generally, in the center of Cook Inlet. I am saying from the east to west shores, we are generally in the center. We call it the center rip and that is predominant. When the season varies, we will fish the east rip or the west rip or we will go on the west side of Calgin Island, on the bar, depending on what the fish are doing, at that time.
Q Have you ever fished south of Calgin Island?
A Yes, I have.
Q How far south of Calgin Island do you fish?
A We have a boundary line, between Anchor Point, and a point which is off Chinitna Bay. The Fish & Wildlife [5] Service establishes a line.
Q While you have been engaged in your fishing activities, in Cook Inlet, have you ever been apprehended or in any way met by anyone, for an alleged violation?
A Yes.
Q When was that?
A In the early 1950's. This year, looking back for 20 years, it is difficult to know whether it was 1951, 1952 or 1953.
Q I see. But you do remember an incident?
A Yes.
Q For whom were you fishing, when this incident took place?
A If I must set a date, as to when I was arrested, I would say it would be 1951, as close as I can recall; because, in fact, I graduated in the year 1951, from college, and I was still a student. We were fishing, at that time, for Parks Canning Company, of Kodiak Island.
Q Do you think this would have been the first year that you fished, in Cook Inlet?

A Yes.

MR. CRANSTON: I would ask that the reporter mark, for identification, as Defendant's Exhibit 1, Chart number 8502, of the U.S. Coast & Geodetic Survey [6] the 16th Edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document marked as Defendant's Exhibit 1, for identification.)

Q Mr. Solie, I am going to hand you what has been marked as Defendant's Exhibit 1 and ask you if the portion of the exhibit, depicted thereon as Cook Inlet, includes the area which you fished in commercially?

A Yes, it does.

Q With respect to the incident, to which you testified, I am going to give you a red marking pen and ask you, as best you can, to indicate on that chart the point at which you were arrested?

A A point or a general area?

Q Well, as best you can, will you describe the area?

A (Witness draws circle).

Q You have placed a red circle, on the map, surrounding the L and the E, in the word Inlet, and that is the area which you would indicate as being that in which this incident took place?

A Yes.

Q Do you recall the type of official, who apprehended you, and from what agency, if any, he may have been?

A He identified himself as being from the United States Fish & Wildlife Service. He was in a small 12-foot or [7] 15-foot skiff with an outboard motor. He came alongside and said that we were illegally fishing and asked if he could come aboard. He took our names and whatnot, at that time.

Q Were you directed to do anything or to go anywhere?

A Yes. We were to report to a lawyer, and I don't know his name, at Kenai, the next day, for this violation.

Q Did you go to Kenai?

A Yes, I did.

Q What took place, when you went to Kenai?

A As far as myself?

Q Yes?

A My father, myself and two other gentlemen were on our boat and we did report to this lawyer's little office, in Kenai, the older part of Kenai. He asked us if we were guilty or not guilty. I said we were not, but we were. I explained the tide situation and whatnot. Then he insisted that we say whether we were guilty or innocent, and I said not guilty. I asked for time, if I needed to get a lawyer to argue the point, because I felt there was enough, on both sides of the question, that should be brought forth, and I wasn't going to just say I was guilty on it. At the end of the discussion, he let us off.

Q Was the alleged violation that you were too close to [8] another vessel?

A Yes.

MR. BRADLEY: I object to that as being a leading question.

BY MR. CRANSTON:

Q Would you state what the alleged violation was; what were you charged with?

A We were supposed to be a certain amount of distance between boats, when we let our gear out; and this way, you guarantee the fish a chance of escapement, by not cluttering up an area. So when we lay out net out, we try to stay apart. There is a tide rip, that runs down the center of the Inlet, here, and we were on one side of it. It kind of tends to suck you toward the center, sometimes; and sometimes you just lay there. But it runs; it moves. As we were on one side of the tide rip, I believe we were at that time moving north; and the other boats were on the other side of the Inlet and they were moving south. We were drifting north, this way, at the time the man was on our boat.

Q Toward Calgin Island?

A Right. As a result, he stayed on our boat. Two other boats went on the other side of the rip, traveling south. Yet, they were so close, by the time he got off the boat and took all of the information, we were [9]

so far away from everybody that there was nobody in this area, to say we were fishing illegal.

Q To what would you attribute the cause of your being too close to that vessel, if you were?

A Simply the tide.

Q Then you did say that the final disposition of the case was what?

MR. BRADLEY: I object to the answer, on the basis of hearsay.

A It was dismissed.

BY MR. CRANSTON:

Q What was the final disposition of the case?

A It was dismissed. He said, "I will let you go, this time," or whatever was said.

Q And it was dismissed, after you spoke to the lawyer?

A As far as I know, yes. I later tried to get into the Army security agency, and I reported this as being arrested and they could find no record of it.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Were you, at the time of this arrest, a United States citizen?

A Yes.

[10] Q Was your vessel a United States registered vessel?

A Yes.

Q Was it your boat; did it belong to you?

A To my father and I, yes.

Q Was it moored, in the United States?

A Yes.

Q Was your father the captain of the vessel?

A Yes.

Q Was he a United States citizen?

A Yes.

Q You did not actually pay a fine, for the charges that were levied against you?

A That's correct.

Q Have you fished Cook Inlet, on a regular basis, since 1951?

A Yes, I have.

Q Is that every summer?

A With the exception that I went to school or was in the army, correct; in fact, I got an early dismissal from the army, three months early, to go up to Alaska to fish.

Q During this time, did you often see enforcement agents, in Cook Inlet?

A No.

Q In the last ten years, can you give me an indication of [11] how many times you saw enforcement activity or agents, in Cook Inlet?

A 1971.

• • • •

[2] The Deponent, WILLIAM T. STUDDERT, was called forward to the witness stand, and, he being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?

A W. T. Studdert.

Q And what is your residence, Mr. Studdert?

A At Philipsburg, Montana.

Q I see—

A Or here, either one.

Q "here" being Anaconda, Montana?

A Yes.

Q And at what address?

[3] A 421 Chestnut.

Q Now, are you presently employed in any capacity, Mr. Studdert?

A Well, I have been kind of sickly for awhile, with heart trouble.

Q I see—
A But I have a ranch out here that keeps me going plenty good.
Q You own a ranch out in the valley?
A Yes sir.
Q What is your present age?
A I was born in '95.
Q 1895?
A Yes.
Q So are you 75 years old now?
A Well, yes, 75, I believe, or is it—
Q That's close enough—
A No, 76, I believe.
Q That's close enough—
A OK—
Q Now, going back a few years, Mr. Studdert, were you ever employed in any capacity by the United States Government in the Cook Inlet area of Alaska?
A I was, yes.
Q And was that—
A All over Alaska, in fact.
Q All right, but specifically relative to your employment in the Cook Inlet area, what was your position, and what were you to do?
A Well, I was kind of a fish warden.
Q You were a fish warden?
A Yes, kind of a fish warden.
Q And for what branch of the United States Government were you employed?
A The Bureau of Fisheries.
Q All right—
A Washington, D.C.
Q And who employed you in this capacity?
A Henry O'Malley.
Q And who was Henry O'Malley?
A He was Fish Commissioner.
Q Henry O'Malley was Fish Commissioner?
A At that time he was, yes.
Q Was he in charge of this bureau?
A Yes, of all of the bureaus. He was in charge of the Bureau of Fisheries, and the various bureaus—

Q All right, and—
A Well, I think there was just one Bureau of Fisheries, and I believe that would catch it all.
Q And where did he reside?
A Washington, D.C.
Q Now, did Mr. O'Malley give you any instructions when he hired you as to what you were supposed to do up there in Alaska?
A You mean up there in Alaska?
Q Yes, when you were working for him?
A Well, we talked it over, naturally, and he would give me instructions.
Q And generally what was it that he told you, you were supposed to come up to Alaska and do?
[5] A When I came up to Alaska, you mean?
Q Yes, in the Cook Inlet area?
A Enforce the law.
Q I see. And to "enforce the law" in respect to what, Mr. Studdert?
A Oh, for fish traps, and violations, and for seining, and for violations in the use of fish traps and seining, and so on and so forth.
Q I see—
A Any violations, oh, the blockade of streams, or preventing of fish from getting up to spawn.
Q Now, were you concerned principally with the area around Cook Inlet?
A At that time, yes.
Q I see. Can you recall about the time when Mr. O'Malley hired you to come up to Cook Inlet?
A Well, that has been quite a ways back. I don't know that I can remember.
Q Would it have been sometime around the year 1924, Mr. Studdert?
A In that neighborhood, yes.
Q I see. All right. Do you have any recollection of how long you worked under Mr. O'Malley in the Cook Inlet area?
A Oh—
Q How many years?

A I think two years, maybe, in and around Cook Inlet, and then maybe two or three other years out of Washington.

Q I see. Now, were there any other people who were, oh, [6] say, who were enforcement wardens, such as yourself, when you were in the Cook Inlet area, or were you the only one?

A Yes I was the only one.

Q You were the only one?

A Yes

Q All right. And was there anybody, oh, say in Alaska such as—well, we know that Anchorage wasn't very much of a place at that time, but was there anybody who was in direct supervision of your activities in Alaska?

A No, I don't think there was, you know, outside of O'Malley, and I would wire him if I got stuck.

Q You would wire O'Malley?

A Yes.

Q In other words, you dealt chiefly with O'Malley?

A That's right.

Q And with no one else in the Territory of Alaska at that time?

A That's right. Well, there was Dr. Gilbert also, who was down there at some university in California, and he was head ichthyologist, and there was also Dr. Willis H. Rich, they were both professors in zoology, they helped out.

Q But as far as your enforcement activities, you relied upon, and you dealt directly with Mr. O'Malley, is that right?

A That's right.

Q Now, with regard to your activities in Cook Inlet, when you first went up there, did Mr. O'Malley give [7] you any written instructions as to what you were supposed to be doing?

A Well, no, but I went back to see him there, you know, when he called me back to Washington, and so he told me to go up there and enforce the law, because it hadn't been very well done before.

Q All right. And after you came to Alaska, did he give you any written instructions, or did you talk mainly, or communicate by wire back and forth, or how did you do that?

A Well, by wire, mainly, and then there was a man by the name of Dr. Willis H. Rich, who was from Stanford University, and another doctor there, that I worked with in the spawning of the salmon, and one thing and another, in the creeks and streams all over up there, you see.

Q But your communication with Mr. O'Malley was mainly by wire?

A Yes.

Q Now, did you make any written reports to Mr. O'Malley, that is, formal type reports, concerning your activities there?

A Well, I made a monthly report to the Bureau of Fisheries in Washington, D.C., and made the reports to his attention, you see—

Q I see—

A That made him pretty busy, because he must have had a lot of reports to read.

Q Now, I doubt that you would have any, but did you keep any copies of those yourself?

[8] A No, if I did, they are gone.

Q They are gone?

A I wouldn't say for sure that I did—I might have, you know, but so many years have elapsed, and a fella doesn't keep that stuff around, you know, after it gets so old.

Q But you do recollect sending reports of your activities back to Washington, D.C., is that right?

A Yes, that's right.

Q Monthly reports?

A That's right.

Q Now, Mr. Studdert, we have had marked by the Reporter for identification as Deposition Exhibit No. 1, this map, which is United States Coast and Geodetic Survey 8502, the 16th edition, July 4th, 1970, which has been corrected through Notice of Mariners, 27/70, and, Mr. Studdert, now I am going to hand you what

has been marked as Deposition Exhibit No. 1, and I will ask you if you are familiar with the water area designated on this chart or map as Cook Inlet?

A I would be, yes.

Q You are familiar with it?

A Yes.

Q And with reference to this chart, is it fair to say that the area over which you engaged in your activities was generally northward of a line from Cape Douglas to Cape Elizabeth?

MR. CHARNEY: Objected to on the ground that the question is leading.

[9] A Yes, I would say so—it would take in Cape Douglas too, and Cape Elizabeth.

* * * *

Q Well, do you mean that you would not go below such a line?

A Well, you could say that you could strike that line, you see, and that would be about it, but if there was anything that had to be done below it, why you would go and do it, and that would be your job to do, you see.

Q Now, by the word "below" do you mean north, or do you mean—

A I mean southerly—southerly—north would be, I mean, north would be would be going up Cook Inlet, you see, but I meant below Cook Inlet, where you go down below there a ways, and you would take care of that too, of course.

Q I see. But did you also go into the area north of the [10] line from Cape Douglas to Cape Elizabeth?

A Yes, right up to Anchorage.

Q I see. You patrolled that whole area?

A That's right—

Q Is that correct?

A Yes.

* * * *

Q And what was the primary function of the Bureau of Fisheries, so far as you were concerned?

A Well, in the promotion of salmon, and to see that the salmon were spawned properly, and that there were

no obstructions in the creek, and also the policing of the area.

Q I see. Now, what do you mean by "policing of the area?"

A To see that the law is obeyed, and, you see, there was [11] a closure every weekend, and that was for traps and also for seining, they have to pull up too, and you would have to see that that was observed.

Q And was that your main duty, to see that the law was obeyed?

A During the fishing run—during the run of the fish it was, mainly, yes.

Q During the fish run?

A Yes.

Q And when you are speaking of the law, what law are you talking about?

A The fisheries law.

Q Of what, the United States?

A The Bureau of Fisheries, yes.

Q Of the United States Government?

A Yes.

Q The Bureau of Fisheries of the United States?

A Right.

Q All right, now, Mr. Studdert, I am going to hand you what has been marked for identification as Deposition Exhibit No. 2, and I will ask you if by looking through this, and perusing through it, you can determine what it is?

A I don't believe I brought my glasses with me, but I will do the best I can, that's all a horse can do—now, let me see—

Q Well, let me ask you this, in accordance with your activities for the United States Bureau of Fisheries, were you assigned to any vessel up in the Alaska area there?

[12] A Oh, yes.

Q And what vessel was that?

A The Kittiwake.

Q All right, now, were you—

A It had been a yacht that the Bureau of Fisheries had acquired.

Q And it was named Kittiwake?
A Yes, I think that is some kind of a duck.
Q And are you aware of whether the Kittiwake contained any records of its activities, or maintained any records of any kind?
A Well, there was a logbook kept in the wheelhouse, and that would just about be it as far as any records were concerned, and then that log would be sent in to the Bureau of Fisheries to Washington, D.C., you see, at the expiration of the season.
Q And who kept the logbook?
A Well, myself and the captain.
Q Yourself and the captain of the Kittiwake?
A Yes.
Q And generally what type of activity did you enter into the logbook of the Kittiwake?
A Practically anything that happened.
Q I see. Now, if the records—
A And the ship's condition, and whether she was seaworthy, and so on, and so forth, because there would really blow up some storms, you know, because that is bad country up there.
Q And then did you make any type of reports of the activity of the Kittiwake, based on the log?
[13] A She should have had a daily report somewhere, made by myself and the captain of the Kittiwake.
Q All right, and was there also a monthly report of any kind kept?
A Well, it would be daily, and it would be for 30 days, or 31 days, whatever the month was.
Q But it was a daily report?
A Yes.
Q Now, specifically referring to Deposition Exhibit No. 2, and on Page 4 of that document is a date on the left-hand column there, do you see that?
A Well, I don't—
Q Can you read that at all, Mr. Studdert?
A I can't see that.
Q You can't?
A Not without my glasses.

Q Well, then, let me just read to you what appears on this—
A All right, that's fine—
Q This is under the date of May 27th, 1924. Now, there is an item on that which is marked and noted, "10:35 A.M. Leave Snug Harbor Cannery," and I want to—
A That the Kittiwake?
Q Yes. Now, with reference to what you stated relative to the log kept of the Kittiwake, what would an entry such as I have just read to you, "10:30 A.M. Leave Snug Harbor Cannery," what would that signify or indicate to you?
A Pulled out of Snug Harbor for other points, you know, somewhere else.
[14] Q That you pulled out of Snug Harbor for other points?
A Yes.
Q It would indicate that the Kittiwake had done that, is that right?
A Well, usually it would say something like that it had left Snug Harbor for such and such a place, but apparently that isn't the way it is here—just that they left Snug Harbor.
Q All right, now, with reference to Deposition Exhibit No. 1, you have stated that you are familiar with Cook Inlet, is that right?
A That's right, reasonably well, yes.
Q And is Snug Harbor near the island known as Chisik Island?
A I believe it is, yes.
Q All right, then, where is—
A I think it is, now, but I haven't been to Alaska now and in that area for a good many years, but I think that is so.
Q Now, where, with relationship to Chisik Island would it be? Can you show me that?
A Well, it would have to be off the beach there someplace—is that it there?
Q Well, here is Chisik Island?

A Well, I guess that in there would be it all right, without a doubt.

Q Right in here?

A Yes.

Q And this represents the—

A The shore line—

[15] Q The west shore line of Cook Inlet?

A That's right.

Q Right along here?

A Yes.

Q Now, could you indicate, by placing your finger on this map, where Snug Harbor would be, and then I will try and—

A Well, Snug Harbor would be—well, is that it there? It looks like it—

Q Well, here is Chisik Island right there—

A What about this here—is that Snug Harbor?

Q That's Tuxedni Bay—

A Well, I have a hell of a time without my glasses—I just can't see that very well—I can't tell very well without reading it.

Q But it would be in the vicinity of Chisik Island, is that correct?

A I would think so—that's the way I remember it.

Q All right—

A My eyes aren't good enough to see that map, and my memory really isn't good either to recall that, you see.

Q Now, with reference again to Deposition Exhibit No. 2, there is another item under the indication of May the 27th, which says: "4:35 P.M. Arrive Seldovia Dock," do you see that?

A Yes.

Q What does that mean?

A That would be the little town of Seldovia, which had about 600 to 800 people.

[16] Q All right. And this is on the east side of Cook Inlet, is that correct?

A Well, no, on the west side—no, east side, that's right, on the east side.

Q Right over here?

A Yes.

Q Now, did the Kittiwake make trips between Snug Harbor and Seldovia?

A Well, she was a patrol boat, and she just went anywhere that we thought it might be best to go, you see, so—

Q Now, generally can you recall when the vessel was proceeding from Snug Harbor to Seldovia, what the general route the vessel followed would have been?

A From Snug Harbor to Seldovia?

Q Yes.

A Well, it would have to be easterly—about easterly, or east southeast, something like that.

Q But how would it proceed, that is, what would be the route—

A Do you mean the time elapsed?

Q Yes, and how would it go with respect to the distance traveled, that is, how would you attempt to get to Seldovia from Snug Harbor?

A Well, from Snug Harbor you would go about, oh, southeast, I think, from there, somewhere.

Q And would you change course, or would you move in pretty much a—

A Well, you would alter your course, naturally, for obstructions and reefs, or something like that, you [17] know, and alter the course.

Q And would you then—

A Well, of course, that would be up to the captain, you see, but I would just, you know, having been a captain myself of a vessel, I would stay with him in the wheelhouse, you know, sometimes resting, and the like, but that would actually be the captain's job—Roy Cole was the man that was the captain then.

Q Now, generally, when you can remember when you were proceeding from Snug Harbor to Seldovia, would the alterations of course be of a major extent, or just a minor extent, or how would you designate that, Mr. Studdert?

A You mean chart-wise?

Q Yes.

A Fairly minor, I would say.

Q Fairly minor?
A Yes.
Q In other words, would you proceed fairly directly, do you think?
A That's right, and you would only have to alter the course occasionally, you see.
Q But the alterations, you say, would be what, then, Mr. Studdert?
A Not too great.
Q All right. Now, if you can remember, Mr. Studdert, about what was the rate at which the Kittiwake would travel when it was underway?
A Oh, I would think about 9 or probably 10, if you would push her some.
[18] Q 9 or 10 knots?
A Yes, if you would push her. She would go 10, I believe, if you would "goose her" as the engineer might say, you know, but 9 knots would fit her better, I think.
Q I see—
A 8 to 9 knots.
Q Now, Mr. Studdert, let me just hand you what has been marked for identification as Deposition Exhibit No. 3, and, since you don't have your glasses, I will read it to you—
A OK—
Q This is headed, as follows: "Western Union Telegram. 1924 May 29 AM 6 42. CC102 24 Govt Collect NL Via Seattle. Seldovia Alaska 28. Bureau of Fisheries, Washington DC. Boarded Booth Fisheries Steamer Zapora and New England Fish Company Steamer New England Today Finding both Fishing Halibut in Cook Inlet without Permits. Studdert." And that is spelled on the telegram S-T-U-D-D-E-R-T—
A Yes—
Q And, again, the date on this telegram is May 29th, 1924. Now, that item at the end of the telegram, the S-T-U-D-D-E-R-T, what would that refer to?
A That would be me.
Q That is you, Mr. Studdert?
A Yes.

Q And would that indicate that you had sent that telegram?
A That's right.
[19] Q And when it says on the telegram, "Bureau of Fisheries," what would that mean?
A That's in Washington, D.C. It wouldn't be sent to anyone in particular, or maybe to the Commissioner of Fisheries, Washington, D.C., or maybe just to the bureau, and he would get it anyway.
Q And the Commissioner would get it?
A Yes.
Q Now, what would the indication in the telegram, as follows: "Steamer Zapora and New England Fish Company Steamer New England Today Finding Both Fishing Halibut in Cook Inlet With Permits," what does that indicate?
A Well, at that time everything had to be permitted, I mean, there had to be a permit, you know, to have a fishing operation of any kind, oh, canneries, or ships, or anything, and they didn't have permits, so they were in fault, and subject to being picked up, and all we would have to have then was the Bureau of Fisheries OK to get them.
Q All right. And was it your function, you say, to determine whether or not these ships had permits, or not?
A That's right.
Q And who required that these ships have a permit to fish?
A Well, the master of the vessel would take out the permit.
Q I see. But was this a law that you had to—
A Oh, yes, there had to be a law, that's right.
[20] Q All right. Now, relative to Deposition Exhibit No. 2 once again, where the log indicates as follows: "12:40 P.M. Boarded steamer Zapora, fishing halibut, southwest of anchor point," which is right here—
A Yes—
Q Now, you had left, according to this log, Snug Harbor at 10:35, which was about two hours and five

minutes before the log entry which says, "Boarded steamer Zapora, fishing halibut," is that right?

A Yes.

Q Basing what you can recall relative to the operation of the Kittiwake, and its rate of travel, how far would the Kittiwake have proceeded in those two hours and five minutes?

A Oh, I would think about 16 to 18 miles.

Q 16 to 18 miles?

A I would think so.

Q I see—

A Or knots, well, it would be miles, I guess.

Q And then at 4:35 P.M., the log entry indicates that you had arrived at the Seldovia dock—

A Yes—

Q And where would that be on—

A Well, that was a little town there that was called Seldovia, yes—

Q Now, these 16 or 18 miles from Snug Harbor would be generally, as the Kittiwake operated, in what direction—

A Well, it—

Q From Snug Harbor, of course—

[21] A She would be going in a southerly direction there to Selvodia.

Q Southerly?

A Yes.

Q Now, were these log entries made how often during the day?

A Well, it depended upon the initiative of whoever was in the wheelhouse. If he had the ambition, why he would make a lot of entries, but if he didn't, he would make as few as possible, so there really isn't any required amount, but just something that happens that is unusual is entered in the log.

Q Was it entered in the log, generally, when the event happened?

A Yes, as far as I know, yes, in fact, I always did, and I am sure that Cole always did too.

Q Cole was the captain?

A Yes.

Q I see. Now, Mr. Studdert, during your time in Cook Inlet, when you were patroling there for the Bureau of Fisheries, did you ever observe, so far as you can remember, any foreign fishing vessels in the area of Cook Inlet, which you might describe in any manner in the—

A Well, if we ever did see any, and I probably couldn't answer that exactly because it would be back quite a ways, and if we did, why we would communicate to the Bureau of Fisheries in Washington—

Q I see—

A Either by code, or one way or another, so that then [22] O'Malley got it, the Commissioner of Fisheries, in Washington.

Q You would communicate to Washington?

A Yes.

Q Do you recall actually seeing any foreign vessels there?

A Well, I think that there were some foreign shipping around through there at the time, you know, in the lower Cook Inlet.

Q What about foreign fishing vessels?

A Well, there could have been, and I wouldn't say that there weren't, because fish were at quite a price at that time, and, you know, there was—the fish were desirable to get, and so they poached a lot up in that area—

Q All right, and—

A And we were to have the job of picking them up and getting them out of there, you see.

Q In other words, if you would have seen one, you would have gotten her out of there?

A That's right.

Q And why would you have gotten the vessel out of there, Mr. Studdert?

A Well, if it was a foreign ship, why you would not only get her out, but you would seize the ship, you know, if you could.

Q And why would that have been?

A How's that?

Q And why would you have seized the vessel?

A Well, to get the ship and turn it over to the Govern-
[23] ment.
Q I see—
A To the Coast and Geodetic people.
Q And turn the ship over to the Government?
A That's right.
Q And this would have been anywhere in that area designated as Cook Inlet, on Deposition Exhibit No. 1, Mr. Studdert?
A Well, it could be—you know, it could be that there were some, but I can't really recall right now, or remember—my memory isn't quite that good, but there could have been some monkey business going on there too, you know, with these foreign vessels going in there to fish, and if you catch them, why all right, and if you don't, it was all right too, I guess, I mean, they might be in there, and you are not, and if you happen to get them, well—there was some kind of a penalty on that, I believe, and usually the Bureau of Fisheries Commissioner takes that over then—takes it out of your hands, and they would maybe file suit against them, or do whatever was necessary with the matter.
Q And back in 1924, when you were on Cook Inlet, did you think that the foreign vessels had any business in Cook Inlet?
A Well, we would run them out, you know, unless they would happen to have a "Man-of-War" or something in there, but we would get them the hell out of there if we could—
Q I see. So then—
[24] A I don't know whether we were right or wrong, but, after all, this was in the United States of America, and I don't know that they would have any business in there—I know that they would have kicked us out damn fast if that was in Russia.
Q What was the United States of America—do you mean Cook Inlet?
A Yes, Cook Inlet.
Q But, specifically, however, you can't remember having seen a foreign vessel there, is that right, Mr. Studdert?

A Well, I can't say that I did, but I wouldn't say that I didn't, and I wouldn't say that we didn't haul them out of there, but I just don't remember that well, you see, any more.
Q It is difficult for you to remember?
A My memory is bad.
Q It has been a long time ago?
A Yes.
MR. CRANSTON: I wonder if we might go off the record for a few moments.
MR. CRANSTON: Now, on the record again, please. Mr. Studdert, just a couple more questions—
A Fine—
[25] Q When an event took place, and I am referring to Deposition Exhibit No. 3, which has as its heading, "Western Union Telegram," and which was addressed to the Bureau of Fisheries, and signed by Studdert, would you, if you were to send a telegram to O'Malley, would you do it immediately after an event took place, Mr. Studdert?
A Well, it would be as soon as we got to a wireless station, you see.
Q As soon as you got to a wireless station?
A Yes. Very few of those little boats had a wireless aboard, but if they had, of course, then they could contact a shore station and we could get it right off, you see.
Q You would do that as soon as possible?
A Yes.
Q Now, between Snug Harbor and Seldovia, where were the wireless stations, if any?
A Seldovia.
Q Seldovia?
A Yes.
Q That was the only wireless station?
A I think that they had a wireless station at Snug Harbor for a little while, but it was just a cannery that was there, and usually it was closed down, you know, because it would run for only, oh, maybe three months out of the year, you know, and then it was closed down.

Q Now, can you recall generally, and this may be testing your memory a little bit, but, if you can recall, [26] what your general running time was between Snug Harbor and Seldovia—how long it took the Kittiwake to make that run?

A Oh, three and a half hours, maybe.

Q Is that right?

A I would think so, just roughly guessing.

Q Three and a half hours?

A Something like that.

Q Now, on the log, when you kept the logs, so far as you can recall, were they kept accurately?

A Oh, yes, they were no good unless they were.

MR. CRANSTON: I have no other questions.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Now, Mr. Studdert, I am going to ask you some questions—

A Fine—

Q To try and clarify some of these things that you have been discussing—

A Fine—

Q And some of the things that you have been discussing with Mr. Cranston, and I may ask you some other questions—

A All right—

Q Now, Mr. Studdert, I have here in my hand Deposition [27] Exhibit No. 2, and Mr. Cranston was reading from the entry on that document of May 27th, 1924, as you will recall—

A Yes—

Q Now, the first entry on that document is 12:00 A.M., and it says, "Off East Forland, enroute Polly Creek," for May 27th—

A Yes.

Q Does that mean that they were going directly to Polly Creek?

A Well, that—

Q That is, that is the destination?

A Well, that would be the general destination, but as I think of it now, it wouldn't mean that we wouldn't turn, you know, and go up some inlet, or something else like that, if we thought of something that needed to be checked.

Q Why would you turn?

A Well, for the reason of something else, you see, that we had—

Q But if the entry said you were enroute to somewhere, then you would have a destination?

A Well, you might be enroute to this particular point, but you might turn, you see, off the point and go up the inlet, for instance, something like that.

Q But where there were set ports of call, wouldn't you have had to go from one to another?

A No sir. You see, we were patroling fishtraps, and such as that, and a lot of poaching was done during that time, and that was mainly our business, you see, [28] picking up people who were involved and unlawfully engaged in some illegal fishing or poaching, or something, you see.

Q So it is fair to say that you wandered around this area?

A Which?

Q You wandered around?

A Well, not exactly wandered, because we went to direct points, you see, to apprehend these people, if you could, or if it were necessary.

Q Now, rather than—

A You see, a boat of that kind is charged mainly with the, oh, with the keeping of the law, you see, insofar as fishing is concerned.

Q Now, if rather than saying, "Off East Forland, enroute Polly Creek," you said in the log, "Leave for Polly Creek," without saying "enroute" or anything else, what would you do then?

A I don't understand the question—

Q Well, if you—

A You see, "enroute" means that you are going someplace, as I understand it.

Q Yes, but I am saying, rather than to say that you are enroute to someplace, you would just say just leave one place, now, what would that mean?

A Well, that would just mean that you left that point, you see, and then going to another point, and maybe you didn't disclose the other point that you would be headed for.

Q Like you could maybe change your mind in the middle [29] of the run?

A Could be—could be, yes, pretty easily.

Q And you would—

A And weather would change the route sometimes, if it were bad.

Q Now, if you left, oh, say the Snug Harbor cannery, might you go over to Anchor Point before you would go to the—

A You might, because there was a big fishtrap there at Anchor Point, which was a tremendous affair, and that belonged to the—oh, what the hell, I can't think of the name of that outfit now—oh, Port Graham, and they had traps, you see, all along the shoreline there, and we had to patrol all those traps, you know, to see that they were not fishing illegally.

Q And this would be something of interest to you, is that right?

A Well, yes, if they were fishing illegally, why you would haul them in, you see.

Q Now, were those traps very near the shoreline, Mr. Studdert

A Oh, they would be a thousand feet out.

Q A thousand feet?

A About that.

Q Did you consider that near Anchor Point?

A That could be near Anchor Point, yes.

Q If you saw a ship near Anchor Point, I suppose it would be in that general vicinity of a thousand feet off shore?

A Yes, something like that, however, it is quite flat [30] when it is off the point there, you know, so they have to keep pretty well off there, if it is a ship of any depth.

* * * *

[33] Q Do you know why you didn't have jurisdiction more than three miles from shore at Cook Inlet?

A Why?

Q Yes.

A Well—

MR. CRANSTON: I don't know that Mr. Studdert has testified to this point, and this may be improper—

A Well, I don't know that that's correct—I think I answered you that I didn't know that is correct, but it may be more than that—I don't know that the [34] wardens had—

MR. CRANSTON: I am going to object to the question, for the record, on the ground that I am not certain that the witness has testified to that point—

A You see, the three-mile limit is for the coastline in general, but Cook Inlet could come under a different meaning and interpretation.

MR. CHARNEY: Were you ever instructed that it did come under a different interpretation?

A No, never.

Q You never were?

A No.

Q And the normal rule was that it was measured from the shore?

A That's right. Three miles.

* * * *

[35] MR. CRANSTON: I will agree to that. For the record, then, if the Reporter will mark as Deposition Exhibit No. 3 the Western Union Telegram of May 29th, 1924, and a reply to that from O'Malley to Studdert, dated May 28th, 1924, and two other telegrams, one from O'Malley to Smithers, dated May 28th, 1924, and one Smithers to O'Malley, dated May 28th, 1924, so that this entire document may be Deposition Exhibit No. 3 then.

[36] MR. STUDDERT: That was in regard to the Japs off-shore, was it, at the time?

MR. CRANSTON: No, that was the same incident with the Zapora and the New England.

MR. STUDDERT: Well, any American, I think it is his duty to be wary of the Japs or any foreign power that is cruising too close to the shore there.

* * * *

[3] C. D. SWANSON,

a witness in the above-entitled cause, was called for examination by counsel for plaintiff, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[8] Q Do you recall any matter involving foreign vessels fishing in Cook Inlet in the early 1950's?

A Yes, I do. I recall that a report came to the regional office in Juneau that Canadian fishing, Canadian halibut vessels were fishing in Cook Inlet.

Q Do you recall who made that report?

A Not specifically.

Q Who would have made the report or what kind of individual made the report?

A It would have been received from an enforcement officer in our division upon patrol on Cook Inlet.

Q What was the substance of the report?

A That Canadian fishing vessels were observed in Cook Inlet.

Q How did you respond to that report?

A We ascertained whether or not the vessels were within [9] three miles of the shore. The report which came back was negative. They were more than three miles offshore.

Q Who would have received that report?

A It would have been received by Mr. Ralston or Mr. Rhode or Mr. Baltzo presumably. It is possible that I received it myself over the radio. I don't distinctly remember it.

Q Was there a specific procedure for the person to receive these calls? Was he clearly defined—

A All communications to the regional office were by instructions directed through to the regional director. This, of course, could be the regional director or his assistant if he were not present. It could also, in specific areas of jurisdiction as in this case, refer to the appropriate division supervisor.

Q Was there a decision made with regard to this report?

A I recall there was.

Q And what was that decision?

A After discussion of this matter we concluded at the regional director level that these vessels were outside the jurisdiction of the laws that we enforced and the field was so notified.

Q Did you consult with anyone else on that decision?

A I'm certain this was a determination as a result of [10] consultation with whoever was present representing the regional director and the Division of Law Enforcement.

Q When you say the field was so notified, what significance is attached to that?

A Well, the question came in as to our authority to apprehend these vessels and our conclusion was that we had no such authority and this determination was relayed back to the field agents so they would have that information and not proceed to apprehend or attempt to apprehend those vessels.

Q You indicated that when a call came in it was addressed to the director generally?

A Regional director.

Q Regional director, and that it was customary whoever was there and could handle the problem would take the call, is that correct?

A Yes, whoever was there representing the regional director in his absence, whoever was representing him in his absence as acting director.

Q This included what individuals?

A Mr. Baltzo or Mr. Ralston, or in the absence of both—I should say all these three, possibly other division supervisors.

Q Would you be one of those individuals?

[11] A I could have been.

Q Is it possible that Mr. Ralston was not involved in this?

A It is possible that he was not there.

Q Do you know whether this was a unique decision or was it consistent with the policy that had been followed?

A There had been previous incidents which resulted in discussion of our authority outside the 3-mile limit which had been determined to be outside of our jurisdiction, and in that sense it was consistent.

Q As a result of this incident and these other occasions when you discussed jurisdiction, does this mean that the field agents were generally instructed that they had no jurisdiction over foreign vessels inside Cook Inlet more than three miles from shore?

A Yes.

Q Were there any written instructions or written guidelines to your field agents?

A I can't recall.

Q After this incident were there any understandings with respect to enforcement against foreign vessels in Cook Inlet beyond three miles?

A Well, the understanding from this decision would be [12] that in any subsequent instance of vessels in similar situations, they would not be apprehended.

Q Would this decision with respect to jurisdiction over foreign vessels extend to other types of fisheries and—

A Yes.

Q Do you recall if fishing by vessels beyond three miles from shore of Cook Inlet was reported either before or after this incident?

A I recall no other instances.

Q You referred to the Anchorage District which includes Cook Inlet. Would the Anchorage District include Cook Inlet?

A Yes.

* * * *

[15] EXAMINATION BY
COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

* * * *

[24] Q Now, where did you operate while in the Coast Guard?

A On patrol in Southeastern Alaska, off the coast of Southeastern Alaska, and later on-shore assignments at Kodiak and Seward.

Q I see. You never operated any type of seagoing patrol in the Cook Inlet area?

A No, sir.

Q What was your responsibility while at Seward and in Kodiak?

A At Kodiak I conducted duties under the designation of captain of the port which I related to security of the port, the commercial port, and the entrance and departure and control of vessels in and around that port. At Seward I had similar responsibilities for a broad area including Cook Inlet and Prince William Sound and some of the interior of Alaska related to the security and protection of the ports and port facilities and the control of commerce in and out of these ports.

Q Now, you say the Cook Inlet area did include an area [25] of your responsibility?

A Yes. Port facilities.

Q I see. Would that have included all the way up to Anchorage?

A Yes.

Q Or was there a separate captain of the port in Anchorage?

A It included Anchorage.

Q And you were to ensure that, what, basically, no foreign, no enemy vessel—

MR. RASHKOW: I will have to object. It is a leading question.

MR. CRANSTON: Well, he's on cross-examination. I think I can lead an adverse witness on cross.

MR. CHARNEY: I think you have gotten into a field that was not subject to direct examination.

MR. CRANSTON: He brought this all out on direct, what he had been doing, so I think as long as he mentioned it I can explore it. Apparently, it is part of his background. I'm going to keep asking you these questions.

BY MR. CRANSTON:

Q Did you consider it your responsibility to keep the entire area secure from any enemy intrusions?

[26] A Responsibility was limited to the protection of the port and port facilities against sabotage and arson.

Q Did you concern yourself at all with the vessel traffic in Cook Inlet?

A No.

Q You weren't concerned with that aspect at all?

A No.

Q You didn't consider that as anything necessary for the immediate protection of the ports along Cook Inlet?

A That was not my assigned responsibility.

Q Well, let's pose a hypothetical. Suppose that a foreign vessel of any type while you were assigned to this job had appeared in the waters of Cook Inlet, what would you have done?

MR. RASHKOW: I will have to object on the ground that the facts are not before the witness.

BY MR. CRANSTON:

Q What would you have done?

A Shall I answer this?

MR. RASHKOW: Yes.

THE WITNESS: Would you restate the question.

BY MR. CRANSTON:

Q If while you were fulfilling your job which you have [27] described to me at Seward you had become advised of the presence of a foreign vessel entering the waters of Cook Inlet, say, anywhere north of Cape Douglas or Point Gore, what would you have done?

A Notified the Navy at Kodiak who had the responsibility for that.

* * * *

[31] Q To your knowledge was there any letter or memoranda made which indicated or talked about or is concerned with this incident of sighting a Canadian halibut vessel at Cook Inlet?

A You're speaking of transmitting this to the regional office or referring it back?

Q Anything whatsoever. Was there any reference made to this in any written memoranda, letter, document of any type, whether transmitting it to a higher office or what?

A I'm sure there were documents prepared discussing this subject. It is hardly a question that would have been resolved without some communication to higher authorities.

Q Now, you think these would have been in writing?

[32] A Either in telegrams or in writing, yes. Telegram was the common method of communicating in those days.

Q Where would the telegram have been sent?

A These are matters outside of my knowledge, actually because I don't know if one was sent.

Q But you do know that? In other words, it is not outside your knowledge the fact that this report was received concerning a Canadian halibut vessel?

A Yes, I have knowledge that it was received?

Q Apparently you have some knowledge as to the disposition that was made?

A Yes.

Q And as I understand your testimony, you are saying that a decision was made in the Juneau office concerning this, is that correct?

A That is my recollection.

Q Well, you have categorized your testimony with respect to that thing about which you have knowledge and that thing about which you don't have knowledge. Now, do you have definite knowledge that such decision was made in the Juneau office concerning this matter or is this something you are speculating about?

A I can only say that I learned of it in the Juneau [33] office.

Q All right, from whom did you learn this?

A It would be from the regional director or whoever was acting for him.

Q Now, am I to understand, first of all, just so I get this whole thing straight, that whatever communication was made concerning this Canadian vessel was not made to you?

A I don't recall receiving it directly.

Q Well, do you think you received it directly or do you think you did not receive it directly? I'm going to go into this in some detail because this is very important and I'm going to get at the basis of this, apparently through your testimony, so I have to find out exactly what took place. I can't accept a hypothetical and suppositions.

A Well, as I explained earlier, messages were directed to the regional director from the field. This was customary practice. In some instances where it was known that a particular staff member of the regional directorate would be the individual to handle this matter it could possibly have been called directly to that person's attention.

Q Was it called to your attention?

A I can't recall if it was called to my attention directly or by one of the regional directors above me. Now, [34] this could have come by radio or it could have come by wire and it could have come by telephone call.

Q Now, in other words, you're saying that you don't remember how it was called to your attention. You cannot say the call was made directly to you—

A No.

Q —is that correct? I want to be fair about what I am supposing here because—

A I can't say it was made directly to me.

Q You can't say it was made directly to you. All right. So then if it was not made directly to you it would have been made directly to whom?

A Whoever in the regional directorate was responsible or present at that time.

Q And that would have been who?

A It could have been Clarence Rhode, it could have been Howard Baltzo and it could have been Dan Ralston or it could have been myself.

Q But I have the feeling, and correct me on this if I'm wrong, that it was not to you directly?

MR. CHARNEY: I object to this. He has given his answer.

MR. CRANSTON: Well, but he equivocates. He says one thing and then later on he says it could have been to him.

[35] THE WITNESS: I can't recall if it was or not. There were many messages that arrived at the Juneau office that were received by staff personnel monitoring the radio system.

BY MR. CRANSTON:

Q All right, let's pass for a moment the exact person who may have received this message and go on to its disposition. After it was received, then apparently some action was taken regarding it. Is that a fair statement of what you have testified to?

A Right.

Q And, again, I believe a fair statement of what you have testified to is that whatever action was taken was not by you, is that correct?

A Officially not by me. I may have physically transmitted the message.

Q All right, you acted as a conduit for the message, you think, but you are not even sure of that, are you?

A I was knowledgeable of the decision and the fact that it was relayed back to the field. I participated in the discussions that resulted in the decision.

Q All right. You participated in the discussions that resulted in the decision but you did not make the decision yourself, is that correct?

[36] A That's correct.

Q All right, with whom did you participate in these discussions?

A Whoever of the regional directorate was present and acting for the regional director.

Q Well, is this a shorthand way of saying Howard Baltzo?

A It could have been Clarence Rhode or it could have been Howard Baltzo or it could have been Dan Ralston or it could have been all or part of this group.

Q In other words—

A I can't recall specifically the individuals. I did not do this unilaterally.

Q You can remember in some detail the substance of the message, the disposition of the message but you cannot recall any of the individuals who were actually concerned in the disposition of this problem, is that correct?

A I'm certain Howard Baltzo was present but Clarence Rhode may also have been present. He was the regional director and his participation would have been pertinent.

Q Over how long a period of time did the discussion take place?

A I can't recall. It wasn't a great deal of time.

Q More than a day, less than a day?

[37] A It could have been more than a day.

Q And it is your testimony then that as a result of these discussions in the Juneau office that a decision was made not to interfere with foreign vessels more than three miles off shore in Cook Inlet, is that what you have testified to?

A Yes, sir.

Q Did the Juneau office confer prior to this decision with any other office?

A I did not confer. I cannot testify as to what others did.

Q Well, do you think that this decision was made by Howard Baltzo or by someone else higher above Howard Baltzo?

A I don't know.

Q Do you think any telegrams were sent to Washington concerning this?

A I would assume there was communication, but I don't know this. I can't testify to it as a fact.

Q Isn't it a fact, Mr. Swanson, that you really are of the opinion and you have made the statement to per-

sonnel of the State of Alaska that Howard Baltzo could not have made this decision, that it would have had to have been made by someone in higher authority if a decision were made, namely, Mr. Day or perhaps Donald Chainy who is the chief counsel for the [38] Bureau?

A No, I didn't tell Mr. Cheek that.

Q You didn't tell him that?

A No.

MR. CHARNEY: At this point I would like to make a statement on the record to put the State of Alaska on notice that throughout these series of depositions that have been going on for weeks, the tactic of Alaska has been to have unreliable information to be used to try to impeach the testimony of the witness and I find that this is an abhorrent practice, and I think Alaska should not take this tactic. You should be on warning we might request the witnesses not to answer or cease cooperation if this tactic continues.

BY MR. CRANSTON:

Q Mr. Swanson, getting back at exactly the effect of this decision, is it fair then to assume that you do not know whether or not the Washington office of your Bureau participated in the decision?

A I do not know whether they did or not.

Q And is it again fair to say that it is possible that they did?

A Very definitely.

Q Then, let's take it one step further since we seem [39] to be unclear as to any of the personnel directly involved. If the decision were relayed to the Washington office who would have it been relayed to?

A Again, the practice would be to address it to the director.

Q And that was—

A —of the Fish and Wildlife Service, and that was Mr. Al Day.

Q And he is still living, I understand.

A I think so.

Q All right. Is there anyone else that it could have been relayed to?

A It could have been relayed to the chief of the Branch of Management and Enforcement.

Q Who would that have been?

A I believe that was Mr. Jesse Thompson.

Q Is he still living?

A No, he's not.

Q Anyone else?

A I don't know. It could be, as we did in Juneau in the regional office, it would very, very likely be addressed to the director and be handled by members of his staff appropriate to the subject matter of the message which could include Mr. [40] Chainy.

Q Now, do you recall exactly where in Cook Inlet this vessel was observed or said to have been observed?

A No, sir. It was reported to be deep into Cook Inlet.

Q But beyond that you have no idea whether it was in Katchemak Bay, Anchor Point, up from Kalgen Island. Can you give any information?

A The information that we received was that it was more than three miles offshore but deep in Cook Inlet.

Q And beyond that you cannot pinpoint?

A No, sir.

Q Who was the chief enforcement officer in the area at this time?

A Mr. Larsen, Holger Larsen.

Q And who else was working with him?

A I can't recall exactly. There were other officers or enforcement agents also assigned to the district. I can't recall offhand who they were.

Q All right, now, you have testified that the conclusion which was reached was transmitted to the personnel in the field, is that a fair statement of your testimony?

A Yes, meaning in the Cook Inlet area.

Q And I assume then that the personnel to whom it was [41] transmitted would have been Holger Larsen, he being the chief enforcement officer in the field?

A I'm sure he got this message but it could have been directed to the officer who presented the question, more specifically, at a different location, perhaps.

Q All right, now, when you say the response and the decision which had been made was transmitted to personnel in the field, do you mean that there is a general guideline or policy established which you expected all personnel to comply with when this question arose again?

A Well, I'm satisfied that the response would have related to the legality of the incident as opposed to the specific—or the legality of the circumstances as opposed to the specific instance, and in which case it would be equally applicable to similar incidents.

Q Now, since you testified that it would have been equally applicable to similar incidents, was any general policy along this line made known to those persons in the field whose responsibility it would be to enforce the laws and regulations?

A I can't recall a specific instruction; that is, to all officers, all agents.

Q So, when you testified that field agents generally were instructed that they had no jurisdiction over Cook Inlet [42] more than three miles from shore with respect to foreign vessels, what type of general instruction are you referring to or did you refer to in your direct examination?

A I don't recall that I specifically related that comment to Cook Inlet. It was generally indicated to all officers that he did not have jurisdiction outside the 3-mile limit as to foreign vessels.

Q "It was generally indicated." Now, how was it indicated?

A This could have been in written instruction, it could have been in verbal instructions at our annual conferences. I can't recall.

Q Who would have made a written instruction if such a written instruction were in fact made?

A The regional director would logically have published such an instruction or the regional supervisor of the Division of Law Enforcement.

Q And that would have been Mr. Ralston, is that correct?

A Yes, or myself in an acting capacity.

Q Can you remember specifically whether or not any such written instructions were made?

A No.

Q Can you remember specifically any annual conference [43] where such a general instruction was given?

A No.

Q Aren't you really assuming an awful lot then when you say that the field agents were generally instructed they had no jurisdiction when, in fact, you are unable to disclose how or when such a general instruction was given?

A The limitations of the Fish and Wildlife laws are quite well defined, and most officers were familiar with the limitations of these laws.

Q All right, but you are assuming all this, aren't you?

A I'm certain it was discussed in some of our meetings or communications, but I can't tell you specifically when or where. This is a subject that would logically have been discussed. I can't say that it was.

Q You can't say that it was discussed?

A No, I can't recall when it was.

Q Well, you also just testified you can't say that it was. Was that really an accurate statement of what—

A No.

Q That statement was not accurate?

A I can't recall. I'll correct that statement.

Q All right. You can't recall that it was, but yet your testimony is that you're certain that it was?

[44] I recall that—excuse me, strike that. Restate your question, please, as to what you—

MR. CRANSTON: Read back the question, please.

(The question read.)

THE WITNESS: Would you please restate what you're referring to as "it?"

BY MR. CRANSTON:

Q The instruction relative to the authority with respect to foreign vessels more than three miles offshore in Cook Inlet?

A I recall that instructions were passed back to the officers who inquired that in this instance that we did not have jurisdiction over this Act over three miles offshore.

Q All right, but that is quite different, is it not, from saying that field agents were generally instructed? In other words, now you are testifying that this one particular agent who made the report was instructed with reference to this report but you are not testifying that a general instruction was given to field agents?

A I can't recall the form or the time or the place when this matter was discussed with all agents together. We only had one meeting a year when all agents were assembled together. I can't state or I can't recall the time or place or if such an [45] instruction was specifically given.

Q You cannot recall if such an instruction was specifically given?

A That's right.

Q Is it also fair to say that you are not certain if such an instruction was specifically given?

A Such an instruction was given to the officers who posed the question.

Q But beyond that your testimony is that you will not say with certainty that additional instructions were given?

A That's correct.

Q Thank you. You testified that you participated while you were in the Cook Inlet District in designing and preparing guidelines to carry out your program. Is that basically a fair statement of your testimony?

A I related this to my duties when I was in Juneau.

Q Well, now, is this while you were involved as an assistant to Mr. Ralston?

A Yes, yes.

Q You then were familiar, I take it, with the policy of the Division of Enforcement with respect to commercial fisheries in Cook Inlet?

A Yes.

[46] Q Was it the policy of the Division of Enforcement with respect to commercial fisheries in Cook Inlet to discriminate in favor of foreign fisheries against

American fisheries, or those engaged in foreign fisheries to discriminate in their favor as against those engaged in American fisheries?

A Not to my knowledge.

Q It was not the policy?

A That's right. Not to my knowledge.

Q All right. Now, let's carry that out. You have testified, I believe, that you or somebody whom you are not completely certain, had reached a decision that foreign fishing vessels more than three miles offshore in Cook Inlet were not to be interfered with, is that correct?

A That's correct.

Q All right. Now, explain to me generally what the laws and the regulations with respect to salmon fisheries required for, let's take as an example, drift netters?

A The same rules would apply insofar as policy was concerned.

Q All right, but let's just ask specifically what laws and regulations you enforced as applicable to them?

A Starting and quitting times, in the areas in which they fished and areas primarily they could not fish.

[47] Q Any other?

A Length of nets, yes.

Q What did that apply to?

A I can't recall what specifically.

Q Were you concerned, for instance, with the length of gear that the fisherman could use?

A Yes.

Q And the spacing of the gear?

A Yes.

Q Are you familiar at all with the basis for imposing such gear limitations on a fishery?

A Yes.

Q What was that basis?

A It was to accomplish an escapement of the anadromous fish through the fishing gear and into the spawning grounds. That was the purpose of it.

Q And, in effect, then the application of the regulations to those engaged in the fishery was to restrict somewhat the amount of fish which they could take?

A No.

Q Well—

A Please, restate that.

Q These regulations were intended to impose some limit [48] upon the amount of fish which could be taken from the fishery, is that correct?

A No.

Q Well, I assume if there were no escapement then essentially all the fish could be taken, is that not correct?

A Please, restate that.

Q If there were no escapement as a result of the types of gear and spacing of gear and other regulations, then a substantial number, if not almost all of the fish, would be taken?

A Would be taken?

Q Yes. Or could be taken?

A This is a logical conclusion. Do you understand the terms you are using?

Q Yes.

A All right. Did I answer your question?

Q Yes, you answered my question. Now, other witnesses have testified that such things as spacing limitation, length of net regulation, primarily with respect to drift net fishermen, were imposed with respect to American fishermen outside or beyond three miles in Cook Inlet?

MR. CHARNEY: I object to that. It is not in the record.

MR. CRANSTON: Well, let's get it in the record.

[49] BY MR. CRANSTON:

Q Did you not, in fact, seek to ensure compliance with your regulations by all American fishermen throughout the entire Cook Inlet District?

A Not to my knowledge.

Q Not to your knowledge?

A The White Act provided that no fish taken outside the territorial waters could be landed in the Territory, if they were taken during a closed period within the Territory.

Q Are you testifying now that the regulations of the —that were promulgated under the White Act were not imposed against American fishermen more than three miles offshore in Cook Inlet?

A I was not present. I cannot testify.

Q All right, you were not present but do you have knowledge or are you informed that they were not so enforced against American fishermen more—

A No, I do not have knowledge.

Q You don't have any knowledge one way or another on this point?

A No, I don't. I was not present and observed the salmon fishery.

Q Did you hear anything about, about any attempts to [50] impose regulations against American fishermen more than three miles offshore?

A I can't recall that.

Q You can't recall any conversation, any incident, an attempt by Holger Larsen directly under you of anything of this sort more than three miles offshore of Cook Inlet?

A I can't specifically recall it.

Q Well, since in the past we haven't been afraid to talk about generalities, can you generally recall it?

A No.

Q You had no feelings one way or another about this in your job as second in command of enforcement in the Cook Inlet District?

A I can't recall that it was a subject of discussion or question within my presence.

Q Within your presence. Would you explain what you mean by that statement?

A I mean by that that I do not recall receiving a question or discussing that subject with Holger Larsen or anyone else.

Q Is it your testimony then, as I understand it, that you had no authority to arrest or enforce the fishery regulations in the White Act against Americans more than three miles [51] offshore in Cook Inlet? Is it your testimony that you had no authority to do this?

A You mean what I think now or then? I can't recall for certain.

Q Then. I want to know what was done then and what your policy was then.

A Within my recollection it was my understanding that we had no jurisdiction outside the 3-mile limit.

Q Where was the drift net fishery conducted, within the 3-mile limit?

A I'm sure it was.

Q It is your testimony that the principal drift net fishery conducted in the Cook Inlet District while you were involved in enforcement there was conducted within an area three miles from shore?

A I didn't personally observe it. I can't answer that.

Q Are you at all familiar with the laws with which you were expected to enforce?

A Yes.

Q All right. Were you at all aware while you were involved in the Cook Inlet area as to where the drift net fisheries were carried on?

A Yes.

[52] Q And it is your testimony today that that awareness is that the drift net fishery was carried on within three miles from shore or most of that fishery?

A Yes.

Q Thank you. Let me just ask one further question. Who made you aware of this point respecting the area in which the drift net fishery operated?

A I can't recall any specific individual. We received periodic reports of activities of fishermen and their activities and I don't recall any report to the contrary. In this sense—

Q Well, do you recall a report telling you that the drift net fisheries in Cook Inlet were conducted substantially within three miles from the shore?

A No, but I—I don't recall such a report.

Q But this is your belief at the present time that is where those fisheries were conducted?

A Yes. That's what the regulations provided for and we had enforcement people on the grounds.

Q Well, wait, now you're telling me that a regulation provided that the drift net fisheries should be conducted within three miles from the shore?

A I'm referring again to area of jurisdiction.

[53] Q Was there a specific regulation that you can refer me to which provided that with regard to the drift

net fisheries, your area of jurisdiction was limited to points within the 3-mile limit?

A I can't recall the specific circumstances.

Q But without belaboring the point you just made the statement that is what the regulation referred to.

A I withdraw that word "regulation."

Q What did you refer to?

A The determination that our jurisdiction extended to three miles.

Q That is what a regulation referred to?

A No, I said that is what brings me to that conclusion, that it was conducted inside the 3-mile limit.

Q You have concluded that the drift net fishery was substantially carried on within the 3-mile limit because you have reached a conclusion that your jurisdiction did not extend beyond three miles, is that what you are testifying now?

A Again, I can only say I was not present. I did not observe it. I can't tell you where the fish—

Q I just want to understand your testimony at the present time. You have reached a conclusion that the drift net fishery was substantially conducted within three miles from [54] the shore, and I am just wanting to ascertain how you have reached this conclusion and I believe you testified that you reached it because you had also formed the conclusion that your jurisdiction did not extend beyond the 3-mile limit?

A Those conclusions would be consistent.

Q Well, I don't want to be unfair, but is this your testimony. Is this what you have testified to? I could have her read back the whole record.

A I can only tell you that I was not there; that I have no recollection of receiving any statements or complaints of any violations to that extent.

Q You received no complaints of which you are aware that there were drift net regulations being violated, is this what you're saying?

A We had many violations but not that one.

Q No violations with respect to any regulation involving drift nets?

A I don't recall—yes, we had violations involving drift nets.

Q But I suppose you're testifying that the reports of those violations involved incidents within a 3-mile limit?

A To the best of my recollection, they did.

Q All right. And getting back to the original subject [55] which we are discussing, this is the basis upon which you concluded that the drift net fishery was generally conducted within a 3-mile limit, is that correct?

A It would seem to me to be a logical conclusion although I would not care to make that testimony at this time.

Q Well, what would you like—I mean I want to get to the basis, first of all, your policy towards drift netters, where you were aware that drift netters fished and what you would do if these regulations were violated?

A I think the regulations were quite specific in themselves. I don't recall what their terms were. I think the records could be found. We have many violations under the drift net regulations and many were apprehended. I don't recall any that related to area of jurisdiction although there may have been some.

Q It is still your testimony that you had no jurisdiction to enforce these White Act regulations against drift netters more than three miles offshore, is that your testimony?

A Yes.

Q Let me ask you this, suppose that a substantial or a significant amount of the drift net fishery was conducted three miles offshore, would you still consider it beyond your authority to enforce the regulations against that fishery?

[56] A I would hesitate to make a response to that question involving a supposition. Why don't you state it more specifically?

Q Well, I think under the circumstances that is the best I can do.

A I stated it was my belief and understanding that our jurisdiction did not extend beyond the 3-mile limit under the White Act fishery.

Q You are hesitant, however, to venture a statement as to what you would do or you would have done back when you had this responsibility, if you were aware that a significant drift net fishery were carried on more than three miles from shore. Is that a fair statement of your position? You are hesitant to venture an opinion on this?

A Yes.

Q And that hesitancy is because in that context you would be uncertain of your jurisdiction or what?

A No, I think that most every incident has its own peculiar circumstances, and those may determine what would be done.

Q Well, you're saying then that perhaps had perticular circumstances arisen involving a drift net fishery more than three miles offshore you are not certain of your previous con- [57] clusion respecting your jurisdiction?

A What was my previous conclusion?

Q That you had no authority beyond the 3-mile limit.

A It was my understanding and belief that we had no authority beyond the 3-mile limit.

Q But, I'm asking you now as you testified that it would depend on the circumstances of each particular case that had a drift net fishery violation been brought to your attention more than three miles offshore, would you decide on the basis of some other, perhaps, considerations whether or not to take any action?

MR. RASHKOW: I object. This is irrelevant. The question is what was done and what was the policy.

THE WITNESS: I prefer not to answer a hypothetical question.

BY MR. CRANSTON:

Q Well, okay. Are you refusing to answer that question?

A Answer it?

MR. RASHKOW: Well, you can answer it.

MR. CRANSTON: I will ask for a court order on the question.

THE WITNESS: Repeat the question.

MR. CRANSTON: Read the question back, please.

[58] (the question read.)

THE WITNESS: We might.

BY MR. CRANSTON:

Q You might have taken some other action?

A No, we might have decided on the basis of some other circumstances.

Q I see. What would those circumstances be?

A It could have been stress of weather, breakdown, conditions which were beyond the control of the operator.

Q All right, in other words, these were circumstances under which you decide not to enforce the regulations, is that right?

A Not necessarily not to but how they were handled, what charges, perhaps.

Q But you would still be concerned, I take it, with respect to such a violation?

A Yes, I think so.

Q And are you testifying that under no circumstances would you hesitate to enforce the regulation with respect to such a violation?

A You have me confused as to what your question is.

Q Are you testifying that under no condition you would not enforce the regulation in the event of a violation of this [59] type? I'm talking about one outside the 3-mile limit.

A Your double negatives have me a little off as to what the proper answer is.

Q You testified earlier that all of your actions with respect to a violation of a regulation outside the 3-mile limit would be governed by whatever circumstances were then apparent to you. I'm not trying to put words in your mouth but I'm trying to get at what you're testifying to.

MR. RASHKOW: I object. He didn't specifically state that. It doesn't conclude what he concluded.

BY MR. CRANSTON:

Q What was your conclusion with respect to particular circumstances. In other words, why would you even look at circumstances?

A You made reference to a violation?

Q Yes.

A And most violations involve numerous circumstances. And I think that most law enforcement agencies consider all circumstances in dealing with that violation. That was the substance of my testimony and it would apply to any violation anywhere.

Q All right. But, I posed the situation where there may have been a substantial or significant net fishery outside [60] the 3-mile limit wherein violations by the fishery of the applicable laws, whatever they were, may have occurred. Then I asked you would you attempt to enforce the White Act and its regulations against such individuals who were otherwise in violation of the law and I believe you testified it would depend on the circumstances.

A Oh, on restate your question, I can only state that it was my understanding and belief that we did not have jurisdiction outside the 3-mile limit which would lead to the logical conclusion that we would not enforce the law. And I can't recall any specific instructions or any incidents involving such instances in such a situation.

Q And, again, this is your testimony even if there should have been a significant drift net fishery conducted beyond the 3-mile limit?

A Yes.

Q Did you ever conclude where in Cook Inlet the 3-mile limit existed?

A Not personally.

Q Did you in your attempts to enforce the laws in Cook Inlet ever conclude that any part of Cook Inlet under your standard was inland waters of the United States or territorial waters of the United States? What rule would you have applied [61] in order to determine where in Cook Inlet or over what portions of the waters in Cook Inlet your authority existed?

A Generally, within three miles of the main shoreline.

Q All right. And was there any point in Cook Inlet where you considered that the area from shore to shore was inland or territorial waters?

A I'm sure there were some areas but I can't remember exactly where they were. Up toward the head of Cook Inlet, but I can't recall what definitions were applied. It might be determined by measurement on the map.

Q Well, you testified to a conclusion which was reached by you relative to the territorial jurisdiction which you had?

A Not by me. When I speak of "me," I speak of the regional directorate of which I was a part.

Q It is a conclusion that you had no jurisdiction beyond the 3-mile limit. Now, would you have then, in effect, said that up to the point where the distance from shore to shore is more than six miles you had no jurisdiction? Was that how you would have interpreted this?

A As I recall, that would have been the method used.

Q That would have been the method. Are you familiar at all with the geography of the Inlet?

A Yes.

[62] Q Are you familiar with the location of Point Possession on the Kenai Peninsula?

A No.

Q With the location of Fire Island?

A In a general way. It has been a long time since I have been there.

MR. CRANSTON: I am going to ask that the reporter mark as Deposition Exhibit 1 U.S. Coast and Geodetic Survey Chart 8502, 16th edition, July 4th, 1970, corrected through notice to mariners 27/70.

(The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q I'm going to hand you what has been marked for identification Deposition Exhibit 1 and ask you where in the area described as Cook Inlet on that map you or

your agency considered the line within which Cook Inlet was inland or territorial waters of the United States?

A I don't think we considered it on those bases. Can you be more specific?

Q Well, let me pose a hypothetical then. I will refer you to Point Possession which is indicated on this map.

A Yes.

[63] Q At the northern tip of the Kenai Peninsula.

A All right.

Q If there had been any violation of the White Act regulations more than three miles from any shore or [*sic*] Point Possession or from Fire Island, which is also indicated on the map—

MR. RASHKOW: All right, I will have to object to this as a hypothetical question not based on facts which are already in evidence.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q But based on your interpretation of the law as you understood it, had there been such a violation, would you have enforced the drift net regulations or the White Act regulations against American fishermen in that area?

A I don't recall the jurisdiction boundary up in that area.

Q Well, I believe reference to the scale of the map which would disclose that from shore to shore the Point Possession area is in excess of six miles. The map, of course, would speak for itself on that point but I believe that is the case. Would you have made any attempt to enforce the fishing regulations under the White Act more than three miles off the [64] shore of Point Possession?

A I don't know. It is my recollection that there was a point somewhere in Cook Inlet above which it was generally considered to be territorial waters regardless of distance from shore, but I can't sight where that was.

Q Well, in other words, now you're testifying that there were circumstances with respect to Cook Inlet where

you did not strictly apply a three mile limit, is that correct? You took other factors in consideration.

A I'm saying it is my recollection that there was some point in Cook Inlet above which all waters were construed to be subject to the White Act, that is true. My previous comments with relation to Cook Inlet is with the lower portion here.

Q "With the lower portion." All right.

A Which is where I understood these fishing boats were present.

Q Was the standard which was used to determine whether or not portions of Cook Inlet were inland waters based, as I believe you earlier indicated, on a rule which would close the 3-mile limit at the point where the distance from shore to shore was six miles across or was it some other standard?

A I can't recall the basis on which that premise was established.

[65] Q What standards did you ever use, then, to determine with regard to particular portions of Cook Inlet where you would enforce the fishery laws? Did you have areas of the Inlet, any portion of the Inlet with which you were concerned in respect to violations?

A I think there were some areas set out in the fishing regulations. I can't recall the details of it.

Q Well, were you concerned with enforcement of the fishing regulations under the White Act at any point or points south of Kalgin Island?

A I think so, yes.

Q You were concerned with enforcement of the fishery laws at point or points south of Kalgin Island?

A Yes, very definitely.

Q All right. Would you have been concerned with enforcement of the White Act and the fishery laws at any point more than three miles from the southerly tip of Kalgin Island?

A More than three miles from the southerly tip?

Q This is Kalgin Island here.

A I realize that, but this is also more than three miles south.

Q My question is at any point more than three miles south of Kalgin Island in the water area of Cook Inlet, would [66] you have been concerned with enforcement of the White Act regulations?

A I don't think I understand your question.

Q All right. Let's take for an example the "T" in Cook Inlet.

A Right.

Q Were you concerned with enforcement of the White Act and the regulations promulgated under that act with respect to, say, drift net fisheries in that area? I'm referring to the "T" in Cook Inlet.

A It is my understanding and recollection that our jurisdiction did not extend over three miles offshore in lower Cook Inlet.

Q Well, now, did you consider the area encompassed by that "T" as lower Cook Inlet?

A I can't recall if a determination had been made. There are shoals and a buoy there and I can't recall whether there was a determined point or not. I think there is even some exposed obstructions there.

Q Let's take, for example, going north from the "T" appears the figure 40, and then above it the figure 25. Let's look at that figure 25 which is in a straight line above the "T" in Cook Inlet. Would you have been concerned with the [67] enforcement of the White Act regulations against anyone in that area?

A I can't be sure.

Q I'll place a circle around the 25 which I referred to on Exhibit 1. Would you be concerned with the enforcement of the White Act in that area?

A I can't recall what determination—the area, or the line, I should say, where it specifically laid, although I do recall there was a line across Kenai, across Cook Inlet, above which all waters were considered to be territorial waters.

Q Did you ever see a document with such a line drawn on?

A I can't recall.

Q But you just testified to a line?

A No, I said it was my understanding that there was an area of upper Cook Inlet above a certain described area which—

Q You are changing the word "line" to a "described area."

A Well, either one.

Q Where did you get this understanding?

A Well, all right, I have a recollection that there was such a determination. I have no more knowledge of it.

[68] Q Did you not, sir, consider the location of this area pertinent to your responsibilities as the person second in command of the law enforcement with respect to fisheries in that area?

A Yes, I presume it would be pertinent.

Q But your testimony is that you do not know where such a line existed?

A I was not personally there.

Q Well—

A And I can't recall having seen it delineated or described. This was my understanding there was a point, a portion of upper Cook Inlet.

Q Did you leave, then, the matter of where the regulations would be enforced in any part of Cook Inlet to the agents in the field?

A Yes.

Q So your testimony is that whatever the decision of the agents in the field was with respect to the enforcement of these laws reflected the position of your department?

A No.

Q Well, you just testified that you left the decision as to where to enforce these laws to your agents' discretion. What do you mean by that?

[69] A I mean by that that they were given all the information that was available on it and insofar as the regulations are concerned and policy, if any existed, and from that point on, they carried out the application of the regulations and enforced the regulations. What they did, I couldn't testify unless I was personally there. I was not.

Q Was there any instance of which you are aware where your agents in the field enforced the fishery laws against Americans, anyplace where your agents enforced fishery laws against Americans in Cook Inlet, where you or someone in your department concluded that they had no jurisdiction to enforce those laws?

A I can't recall it.

Q Well, are you aware of any? Are there any that you know of, any instance?

A No, I'm not aware of any.

Q In the normal course of events had your agents in the field acted in areas which were beyond their jurisdiction or your jurisdiction or your agency's jurisdiction, would that have been brought to your attention?

A Actions in what manner or in what—

Q Enforcing the laws against Americans in Cook Inlet, if they had enforced them or if they had done anything, stopping [70] vessels, apprehending vessels in areas of Cook Inlet where they should not have been doing this, would that have been brought to your attention?

A Not necessarily so.

Q If they had filed court actions with respect to Americans in portions of Cook Inlet not within their jurisdiction would that have been brought to your attention?

A Possibly. Not necessarily so.

Q Would it have been brought to anybody's attention?

A It certainly would have been brought to the attention of the court and very likely the United States attorney.

* * * *

[3] WILLIAM TERRY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?

A I am William M. Terry.

Q What is your address?

A At home?

Q Well, that is fine, your home address.

A 10212 Lawyers Road, Vienna, Virginia.

Q What is your office address?

A The Commerce Building. I am the Director of the International Affairs Office in the National Oceanic and Atmospheric Administration in Commerce.

Q What is your age?

A Fifty.

Q Have you ever had any former occupations with the United States Government in connection with fisheries?

A Yes.

Q Would you describe what those have been?

[4] A On the Washington scene I joined the Fish and Wild Life Service in 1951 in International Affairs, and moved up in the International Affairs Business Fisheries and Wild Life until about two years ago, when I became Acting Deputy Director of the Bureau of Commercial Fisheries. I have been in that position until just this week when I became Director of the International Affairs Office in NOAA, the National Oceanic and Atmospheric Administration.

Q I would like to direct your attention specifically to 1957, February, and ask you if you at that time participated in any conference with the Canadian Government or representatives of the Canadian Government concerning fisheries?

A Yes, a Seattle conference, which I suppose is the one you are referring to.

Q Yes. Would you explain what your role in that conference was?

A Yes. At that time I was, in effect, the number two man in the Fish and Wild Life Service, International Affairs Office, Fish and Wild Life Service then, and they

consisted of Assistant Secretary, Commissioner and two bureaus; the Bureau of Commercial Fisheries and Bureau of Sport Fisheries and Wild Life. In the Commission's office there were several staff offices. One was Bureau of International [5] Affairs and I was number two man. As such I participated in pretty much every international conference relating to fisheries and wild life, usually as adviser to the senior Fish and Wild Life Service man present, although sometimes I was that myself.

Q All right, now, specifically with regard to this Seattle conference, what was the purpose of this conference?

A The primary purpose of the meeting was to work out with Canada the establishment of a legal regime which would have the effect of prohibiting the development of net fishing for salmon in the ocean. I use the phrase very roughly when I say "in the ocean."

Q Was such a regime worked out at this conference?

A Not entirely, no, but it was moved along quite a ways.

Q Did the United States at any time during the conference or subsequent to the conference furnish Canada with any set of maps or charts?

MR. BRADLEY: I object.

BY MR. CRANSTON:

Q All right, furnish Canada with any set of maps or charts which would indicate this legal regime?

A Yes.

[6] MR. CRANSTON: I would like to have this copy of a United States Coast and Geodetic Survey Chart 8502 with the notations in the lower left-hand corner 44-8/4, 9/27; 45-1/9, 7/28; 47-6/30, 9/29; 49-6/20; 50-9/4 marked and identified as Defendant's Exhibit 1.

(Document marked Defendant's Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q Mr. Terry, I am going to place before you what has been marked and identified as Defendant's Exhibit 1 to

this deposition which is a map of Alaska, South Coast, Cape St. Elias to Shumagin Islands with a line drawn on it and ask you if this represents the line which you described as having been furnished or a portion of the line which may have been furnished to the Canadians after the 1957 Seattle conference?

A Given ten or twelve years since I last saw these charts, I would have to say I think so. But I am in no position to say that is the line. It is a long time since I have looked at these charts.

Q All right. Did you at any time after the conference look at charts which would have had this line on it?

A Yes.

Q And as you look at this line now, are you able to [7] tell whether this line differs in any way from the charts which you looked at after the Seattle conference?

A No, my recollection of the lines isn't that good.

Q Would this line in all probability be the line which was furnished to the Canadians?

MR. BRADLEY: Object. It is a leading question.

MR. CRANSTON: I would still like you to answer.

THE WITNESS: I wouldn't know how to calculate a problem like that. My problem is that I last saw these charts probably sometime in 1958 and my memory of the lines and where they were drawn just isn't that good. So, I have no means of calculating.

BY MR. CRANSTON:

Q Did the line which you saw follow the Alaska Coast line?

MR. BRADLEY: Object. It is a leading question.

MR. CRANSTON: All right. I will continue, though.

BY MR. CRANSTON:

Q Did the line which you saw follow the Alaska Coast line generally on a headland-to-headland basis? Is that the approach used in drafting this line?

A You asked me two questions.

Q All right, first of all, what was the approach used [8] by the Americans in drawing the line furnished to the Canadians?

A I would have to explain this in some detail so we understand what we are talking about, okay?

Q Fine.

A The exercise we were engaged in at that time and the purpose of the whole business was to control what we saw as the development of new high seas salmon fisheries. Back in the summer, as I recall 1955, two years before this, more or less, there had been such a threat of seiners operating in the sea off Port Moller, way out beyond any existing fish areas which indicated to us here was a new fishery developing and if we permitted it to develop we would have serious conservation problems and some tough economic problems in addition to the new fishing industry atop of the already existing industries. The Fish and Wild Life Service saw in the ensuing year the three West Coast states, California, Oregon and Washington, became concerned about this because a lot of fishermen come from those states and in addition the territorial people in Alaska became concerned about it. As I recall, the North Pacific Fishery Commission also become concerned about it. Altogether, we decided in the United States that we would try to take action which would involve Canada to prevent the [9] development of these fisheries by using the regulatory authority which the Federal Government had under the North Pacific Fisheries Act and state legislative authority which they would get to prohibit net fishing specifically essentially beyond the surf. We had to get Canada in this Act and this was the primary reason for calling that conference. At the conference we had already gotten action or sufficient promise of action by the three state governments that we were able to show the Canadians at the conference what amounted to a surf line along the United States Coast, a line drawn really right along the surf, except where there were major inlets and we jumped across these. The Canadians in their preparation had developed the same kind of thing, essentially a surf line along the West Coast of Vancouver Island and then in Hecate Strait a line which was not a surf line but which tended to connect the islands. The basis for their line, I don't know. We had not, for that conference, prepared a line along the Alaska Coast for a

couple of reasons. One was we were busy doing other things and, secondly, it turned out to be more complicated than we had originally thought. One thing we found, of course, when we began to look very carefully at the Alaska fishery was that a surf line concept wouldn't work in Alaska, the reason being the Alaska fisheries were in characteristics and in location quite [10] different than the fisheries on the Canadian Coast and the fisheries along the Continental Coast of the United States. In this major respect we had instead of confining the fisheries to the creek mouths we had deliberately pushed the fisheries out of the creek mouths, the reason being that many of the narrow creeks in Alaska was the easiest thing in the world for a perch or gill seiner to set a gill net stretched across to catch all the fish at once. So, for an easy enforcement problem we shoved the fishery out in some cases a matter of a few hundred yards and in some cases a half a mile or more out from the mouth. This meant that a surf line, a real surf line in Alaska, and that wasn't what we were there for. We explained this proposition to the Alaskans and said that we would put down on charts as quickly as we could for them—

Q Excuse me. Did you mean to use the word Alaskans or Canadians?

A Canadians. We explained to the Canadians we would put down as quickly as we could on charts a line, the purpose of which would be to prevent the development of new fisheries but which would not have any adverse effect on the existing fisheries and we told them this would not be surf lines. When we came around to drawing the line—and this by the way was done by our people in Alaska. I did not participate in [11] this myself so I don't know for a fact how they did it. I know only approximately how they did it. They more or less, and maybe less than more, used the then existing management districts as a basis, the rationale being the management districts again more or less described the areas in which the fisheries were then taking place. So, that was the approach. The approach was to draw the line in such a way as to protect the existing fisheries and this, of course, was related to existing management districts.

The result was a series of lines which in some areas certainly jumped from headland to headland and in other areas I suspect followed the sinuosities of the coast. I don't recall exactly.

Q Do you know who in Alaska prepared the charts or drew the lines?

A Yes. Clay Scudder and John Gharrett. The line is known now as the Scudder-Gharrett Line. That is what it was known as shortly thereafter.

Q What, if anything, was the Canadian response to the chart which was furnished them by the United States?

A The charts were long delayed in getting to Canada and as I recall it was either the late—late in 1957 or early in 1958 before we finally got the job done and in October of 1958 we got a response from the Canadians saying [12] that they had studied the charts and felt that some further look at the problem, joint look at the problem was necessary and they made specific reference to some problems not in Alaska but down the Strait of Juan de Fuca. There was a problem of where the surf line would be drawn across the Strait resulting from migratory patterns of fish of United States origin, Puget Sound origin and fish of Canada origin, Fuca and so forth, and they called for a second shot at it.

Q With respect to the particular line drawn on the Alaska Coast, did the Canadians call for a second look at the problem?

A My recollection is that they did in Southeastern but I would be hard put to go any further than that.

Q Is the line which was drawn in 1957 and submitted as you say sometime thereafter, presently operative with respect to the North Pacific salmon fishery and the prohibition of nets?

A In principle, yes. There may have been adjustments in it over the years. There were adjustments in the Straits of Juan de Fuca as a result of subsequent meetings with the Canadians. But my recollection is that no major changes were made in the line.

Q Is it fair to say that the line has then been [13] accepted by the—

MR. BRADLEY: Object.

BY MR. CRANSTON:

Q —by the parties?

MR. BRADLEY: Excuse me.

BY MR. CRANSTON:

Q Is it fair to say that the line has been accepted by the parties to the 1957 Seattle Conference, that is a along the Alaska Coast, as the line which would be adhered to with respect to the salmon net fishery?

A Yes.

Q With respect to the particular means of enforcing the prohibition of using nets to fish for salmon on the high seas, who off the Alaska Coast would be prohibited from fishing with nets on the high seas? That is, citizens of what countries or states?

A Well, persons subject to the jurisdiction of the United States. That is a Federal regulation backed up by state regulation, the state regulations subject to all persons in the jurisdiction of the United States.

Q Did the treaties operate also to prohibit Canadians from fishing with nets on the high seas?

A Which treaty?

[14] Q The North Pacific Treaty or any statutes.

A As a result of our discussions with the Canadians in the Seattle session and the later ones, what we had was a kind of—I am not sure now. It may be an executive agreement. I think it was really an informal agreement that the two governments would move unilaterally in a parallel way; thus, Canada implemented its part of the deal by permitting net fishing seaward of the surf line along Vancouver and the Hecate Straits. We did it by a combination of Federal regulation and initially three state laws and now subsequently the four state laws, so there was parallel prohibition put into effect in the two—

Q The fourth state law would be what state?

A Alaska.

Q Specifically, then, off the Coast of Alaska, would Canadians be permitted to fish for salmon with nets seaward of this line?

A No. As I understand it, a Canadian Ordering Council.

Q And then is it the present United States' position that fishing with nets is permitted landward of the line? Inside the line?

A Except where otherwise the regulations prohibited. That is the Federal regulation. There is only the one which [15] prohibits net fishing—well, prohibits all fishing now, as I recall, except trawling prohibits all salmon fishing except trawling seaward of the line. The Federal regulation is silent on the question inside, and that is whatever the state regulation is saying where they apply.

Q So, then, inside the line the type of fishing that is permitted would depend on the local state legislature regulations, is that—

A As a practical matter. Not entirely a legal matter but as a practical matter. That is to say, the nature of fishing in Alaska is such, salmon fishing particularly in most of Alaska, is such that you can't fish there without using Alaska as a base. Thus, Alaska regulations can be made to apply to citizens of the State of Washington, California, Oregon, even though those regulations might not otherwise apply to them; for example, beyond the territory seas of the United States where Alaska statutes apply only to Alaska citizens. As a practical matter, most people fish up in this area, let us say a gill netter from the State of Oregon—

Q You pointed to the map.

A Let us say in the Kodiak area. The State of Oregon gill netter fishing in the Kodiak area within the territory sea of the United States would be amenable or subject to Alaska [16] regulations. Outside the territory sea of the United States he wouldn't be. But as a practical matter in order to operate he has to operate out of the Kodiak base. So, the practical effect is that fishing inside the line is controlled by state regulation but legally they are two different kinds of regulations.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

• • • •

[30] Q Were the lines Mr. Scudder and Mr. Gharrett drew intended to correspond with the territorial sea of the United States or to the outer limits of internal water?

A No, no connection.

Q For what purpose were the lines that Gharrett and Scudder drew used?

A To prevent the development of fisheries outside the areas where there were already fisheries.

Q Where were the lines prepared?

A In Juneau.

Q And what happened to them after they were prepared?

A Well, they were sent to the Bureau of Commercial Fisheries here in Washington and some review was made of them and they were then transmitted to the Department of State and by the Department of State transmitted to Canada through diplomatic channels. As I recall it, there were two external in Canada and then—

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[3] THOMAS H. WARDLEIGH,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A Thomas Herbert Wardleigh.
Q What is your present age?
A 45.

Q And what is your residence?
A 5808 Kingston Road, Oklahoma City, Oklahoma 73122.
Q What is your present occupation?
A I'm a pilot for the Federal Aviation Administration.
Q And how long have you been engaged in this particular occupation?
A In Oklahoma City, since July of 1969.
Q What was your occupation prior to July of '69?
A I was in the FAA regional staff in Anchorage, Alaska.
Q Now, at any time in your career have you been employed by the Fish and Wildlife Service of the United States?
A Yes, sir, from 1951 through 1959; 8 or 9.
[4] Q Where were you employed?
A In Anchorage, Alaska.
Q Was this your first employment in Alaska?
A Yes.
Q Where had you lived prior to going up to Anchorage?
A In Seattle, Washington.
Q During the period of time, 1951 through 1959, where were you stationed?
A In Anchorage.
Q What were your general duties?
A I was a pilot and also I was responsible for the management of the aircraft and engine repair shop there.
Q And once again, did I correctly state the agency for whom you were employed?
A Yes. U. S. Department of Interior, Fish and Wildlife Service.
Q And was it known as the Fish and Wildlife Service through this entire period of time or did the agency change?
A No. it was the Fish and Wildlife Service through that period of time.
Q During the period 1951 through 1959, who was your immediate supervisor?

A Theron Smith.
[5] Q And what was his function?
A He was supervisor of the aircraft division for that agency.

• • • •

[10] MR. CRANSTON: I request that we have marked as Deposition Exhibit 1 U. S. Coast and Geodetic Survey Chart 8502, the 16th edition, July 4th, '70, corrected through notice to mariners 27/70.

(The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q Now, Mr. Wardleigh, I'm going to hand you what has been marked as Deposition Exhibit 1 and ask you if included within the area depicted on the portion of the map before you is the area over which you transported patrol personnel or enforcement personnel of the Fish and Wildlife Service?
A Yes, it is.
Q Now, with particular reference, if you can, to points on the map, could you define generally with respect to Cook Inlet the areas over which you transported personnel?
A Would you restate the question, please.
Q All right. With reference to particular points on the map, would you describe, first, the southeasterly boundary, [11] so to speak, of the area over which you patrolled?
A We occasionally patrolled as far as Cape Douglas itself and on the south side of the Kenai Peninsula. We had camps in Port Dick and the Point Gore area, so we did patrol as far as Point Gore and Nuka Island and Nuka Bay on the Kenai Peninsula side of Cook Inlet, and occasionally as far as McNeil River primarily in the Cape Douglas area. We rarely went to Cape Douglas or occasionally to the Douglas River, more frequently to McNeil River.
Q Now, on your patrols, did you patrol over any of the water area between the points you have described and up the Inlet from the points you have described?

A Yes.

Q First of all, what was the purpose of the patrol activities?

A Primarily we were concerned with licensing of the traps and the boats and the set net fishery and to observe that they conformed to the hours of closure and opening and to the established distances between units of fishing gear, to make sure that the required spacing existed between set nets and fishing boats and that they did not violate the closed areas or stream mouths along the way.

Q Were you also at all concerned with what we call the [12] drift net fishery?

A Yes.

Q And—

A The principal concern there being the distance between boats and the hours of closure that they did not fish when the zone was closed.

Q And the enforcement personnel who you transported were with you for the purpose of observing compliance with these regulations in regard to the drift net fishery?

A Right.

Q And over what portions of the area which you described did you patrol to determine whether or not these regulations in the drift net fishery were being complied with?

A We went wherever the drift boats appeared each day, and that primarily would be north of a line between Chinitna Bay and Anchor Point. That's where the drift net fishery took place.

Q In these patrols with respect to the drift net fishery did you concern yourself with the question whether or not the particular boats or the fishing gear were more than three miles offshore?

A No, I don't recall that we did.

Q Is it fair to say then that you would patrol the area—

[13] MR. RASHKOW: I object. That's a leading question.

MR. CRANSTON: All right. Well—

BY MR. CRANSTON:

Q What then determined the area over which you would patrol to observe compliance with regulations?

A We tried to go where the boats were or where we felt that the fish would be.

Q I see. During your period of time on Cook Inlet did you on any of your patrols observe any foreign fishing activities in the area denoted on that map as Cook Inlet?

A I cannot recall that we did.

Q Now, you say that you patrolled or transported patrol personnel from the period of time 1951 through 1959, is that correct?

A Yes.

Q Did you generally enter into any discussions with those persons who you were transporting relative to foreign fishing activities?

A Yes.

Q Had any policy relative to foreign fishing activities been brought to your attention or discussed between you and other personnel?

MR. RASHKOW: I will have to object. Whatever he says [14] will be hearsay.

BY MR. CRANSTON:

Q Had any policy ever been discussed?

A We speculated about it between us. I don't recall that a policy as such was known to me.

Q All right. Generally, with respect to the persons who you were transporting for patrol purposes, would it have been normal for you to discuss a policy if one had been established?

A Yes, I believe it would have.

Q And you did not discuss such a policy, or is that what you said?

A We discussed between us what would we do if we saw a fishing vessel and I don't know that this was ever resolved.

Q And did you ever, in fact, see a fishing vessel?

A I cannot recall a specific occasion when we did.

Q So you never had to put any such speculation into practice?

A No.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[16] Q Do you ever recall during any of your patrols whether or not you ever made an actual seizure or an actual arrest of [17] a vessel more than three miles from shore in Cook Inlet?

A I just don't remember either way.

* * * *

[2] R. CHARLES WILSON,

being first duly affirmed, was examined as a witness on behalf of the defendant, as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name?

A Robert Charles Wilson.

Q What is your residence?

A 2714 E. 18th, in Spokane.

Q And what is your age?

[3] A 44.

Q And what is your occupation?

A Right now I am disabled.

Q I see. Does that mean you are more or less in a retired status?

A Well, I am hopeful it is recuperating from an illness.

Q I see, all right.

A And that it is not permanent.

Q Would you go through what occupations you have had up to the present time?

A Well, my main occupation was as a fishery enforcement officer, both temporary and permanent, in Alaska from 1951 to 1962, but skipping 1953 and 1954.

Q And who was your employer while you were a fishery enforcement officer?

A The first was Holger Larsen, and then Jack Scarey, John Scarey.

Q Well, basically you were an employee of the Federal Government, is that correct, the United States Government?

A Yes.

Q And what agency were you under?

A The United States Fish and Wild Life Service, under the Interior Department.

Q Then you were directly under—Holger Larsen was one of them, and John Skerry was the other?

[4] A Yes.

Q Did you have any others besides those two?

A Well, not in the Fishery and Wild Life Service. I believe those were the District Supervisors I had at those times.

Q Now, specifically, when did you first go into this work in Alaska?

A In the spring of 1951.

Q And where were you stationed?

A That year I was stationed on the beach at Granite Point, and later in a small bay in Tutka Bay that I can't remember the name of right now.

Q These locations you described are all you can relate in this record?

A Yes.

Q During the 1951 season, then, you were assigned to what area of the Fishery and Wild Life Service?

A Excuse me, I made a mistake I would like to correct. That small bay was in the Kachemak Bay, not Tutka. Kachemak.

Q During this time you were assigned to the Cook Inlet area in the Fish and Wild Life Service?

A Yes.

Q And specifically in 1951 what was your duty?

A In the first part, at Granite Point, it was to check set [5] netters, to make sure that they were using legal gear and were legal fishing boats.

Q This was more of a shore-type duty?

A Yes.

Q You said that was during the first part of the 1951 season?

A Uh-huh.

Q What else did you do in that year?

A Then I was moved down to Kachemak Bay. I was guarding the mouth of a stream, to keep the boat fishermen from taking the fish out of the mouth of the stream. And it was a shore job, also.

Q Your earlier portion of duty was at Granite Point?

A Uh-huh.

Q What side of Cook Inlet is Granite Point on?

A The west side.

Q And approximately where would that be located?

A About fifty-miles southwest of Anchorage, and oh, I suppose, about 20 or 30 miles northwest of Kenai.

Q Did you have any other duties and responsibilities, other than what you have told us of?

A Not that year.

Q During the 1951 year?

A No.

Q Did you ever engage in any patrol, water patrol or air [6] patrol of Cook Inlet during that year?

A Not that year.

Q Did you return to Cook Inlet in the following year?

A Yes.

Q And that would have been 1952?

A Right.

Q All right. Giving us a broad outline, what—. First of all, how many years, how many seasons, were you assigned to Cook Inlet, from 1952 on down?

A Well, it was every year except 1953 and 1954, right up to 1960 when I transferred to the State.

Q So you were in the Cook Inlet area in 1952, then 1955, 1956, 1957, 1958, 1959?

A And '51.

Q And then you became an employee of the Alaska Department of Fish and Game, in 1960?

A Right.

Q Generally, throughout the years which you have mentioned, commencing in 1952, were your duties pretty much the same?

A Yes.

Q Could you describe what those were?

A The duties were pretty much the same in 1951 and 1952, but in 1955 it changed. That year I went to boat patrol instead of being on the beach.

[7] Q I see.

A And from then on it was almost constantly boat work or airplane work.

Q Could you give the names of the boats that you were assigned to?

A I think in 1955 it was the Steelhead.

Q What about the subsequent years?

A No. Let me see, now, I am not real clear right now, but—

Q Well, the best you can remember.

A In 1955 and 1956 I spent one year on the Steelhead and one year on the Grayling, but I don't remember which year was which. And then in the following years I spent time on the Grayling again, several times, and on the Teal, and on the Kitty Wake, and on the—oh, there was a big 90-foot scow up there. It was called the—

Q Was there a boat called the Widgeon?

A Widgeon, that was the one. And I think that's all of them, but I can't give you the exact dates on any of those.

Q From the time you were assigned to these vessels, were you the prime enforcement officer on the vessel?

A Yes, usually.

Q But was there a captain of the vessel also?

A Yes. The boat operator and an enforcement officer shares the responsibility for the operation. And I, [8] as enforcement officer, directed the operations, and the boat operator did the operation of the boat.

Q Did he have any enforcement duties?

A No, no. He had authority, but he didn't—he didn't use this authority while I was aboard, because that was my job.

Q Do you remember the names of the various boat operators?

A Yes. Ralph McGee, who ran the Grayling, and Max Bowman, who operated the Steelhead.

Q Do you know Mr. Bowman's whereabouts at this time?

A I don't know. He was a man from the Southeast somewhere, but I don't remember.

Q Any others?

A Howard Marks, on the Teal, and, oh, Fred—

Q Are you trying to think of Fred Headley?

A No, that was a different Fred that ran the Kitty Wake.

Q His name was Fred?

A I can't tell you his last name. Ask Ron Naab.

Q When you were on your patrol in the vessels, what determined where you would patrol? Did you reach this decision, or did the boat operator reach this decision?

A Well, if it was a matter of law enforcement I determined it, but if it was a matter of safety, weather, he determined it.

Q You also mentioned you flew aircraft patrol in Cook Inlet?

[9] A Yes, but not as a pilot.

Q But as an enforcement officer?

A Yes.

Q Could you describe the persons with whom you patrolled, who the pilots were?

A Yes. Mainly it was Tom Wardleigh and Theron Smith. And they had several others for short-time duty, but they were the two main ones.

(Deposition Exhibit No. 1, being Chart, was marked for identification, and is attached hereto.)

MR. CRANSTON: This is U.S. Department of Commerce Coast and Geodetic Survey, Chart No. 8502, 16th edition dated July 4, 1970, corrected thru Notices to Mariners 27/70.

A The captain of the Kitty Wake was Fred Barnett.

Q Do you know anything about his whereabouts?

A The last I can remember he had transferred to the FAA and was working in Cold Bay, somewhere in there.

Q Mr. Wilson, I will hand you a portion of the chart 8502 which has been marked as Deposition Exhibit No. 1, and ask you if depicted on that chart, or if included within the areas of that chart, are the portions of Cook Inlet over which you carried out your enforcement duties?

[10] A Yes, it is all on there.

Q Now, by reference to the chart, can you describe what areas in Cook Inlet you carried out your enforcement duties? You may use geographical landmarks on that chart to refresh your recollection, and use that as a base?

A All the way from the head of Cook Inlet (indicating)—

Q When you point to something describe it, because pointing isn't in the record. By "the head" you pointed to a point, Point Mackenzie, or thereabouts?

A And that included Knik Arm and Turnagain Arm, and here it covered the whole inlet on both sides as far as the Barren Islands on the east, to Kamishak Bay on the west.

Q Did you ever patrol as far south as Cape Douglas?

A No.

Q In your patrolling, did you patrol areas which were more than three miles from the shore areas of Cook Inlet?

A Yes.

Q And did you do this as far south as the areas which you just described?

A Yes.

Q What was it—what determined the areas in Cook Inlet where you patrolled? Did you rely on written instructions, oral instructions, or what caused you to patrol these areas?

[11] A It was oral instructions, and it was—every day determined—every day the patrol was determined by the probable areas of fishing activities.

Q Were you familiar with the fishing regulations in Cook Inlet promulgated under the White Act, that is, for Alaska?

A Yes.

Q Did anything in those regulations determine the areas of your patrol?

A No. As far as I remember, we just patrolled the areas of probable fishing activity, and with the idea of enforcing whatever regulations or laws were pertinent to that area.

Q I see. Was there probable fishing activity in Cook Inlet more than three miles from the shoreline of the Inlet?

A Yes.

Q And what type of fishery was that?

A Salmon drift and gill net.

Q Where in the Cook Inlet area did the salmon drift gill net fishery exist, where was it carried on?

A It was carried on mainly between the area of—south of West Foreland and East Foreland to—oh, the area straight across the Inlet from Ninilchik on the south.

Q Did you regularly—did you patrol this area?

A Yes.

Q Where, with reference to distance from either shore, if you [12] can answer, was the fishery carried on south of Kalgin Island?

A Well, it was an area right down the center of the Inlet, probably five miles wide or so, but I don't remember how far that was from shore.

Q When you say the center of the Inlet, you mean approximately equidistant from either shore?

A Yes.

Q Did you ever make any arrests, or stop any fishing vessels, board any fishing vessels in Cook Inlet, pursuant to your duties?

A Oh, yes.

Q Did you make any such boardings in an area south of Kalgin Island, if you can recall?

A We made so many checks and boardings in the areas both north and south of Kalgin Island, that I can't really say that I did or didn't, but I—I must have. That was one of the heaviest fishing areas. But my

memory doesn't tell me right now whether I did or didn't.**

Q All right. But you do recall—you said you did make so many both north and south—by that you mean you did make some, but you can't remember specifically the instances?

A Right.

Q Did you concern yourself, when you made these boardings, with how far you were from any shoreline?

[13] A No.

Q What types of violations were you looking for or attempting to enforce or prohibit?

A Net lengths, proximity of nets to each other—they had a minimum distance that they were legally allowed—and there was a registration we had to check for.

Q What do you mean by "registration?"

A All fishermen had to register with their district office and declare what type of fishing they were going to do; and in return they were issued this paper registration and a metal plate to put on their boat, to identify them with the number.

Q Was this to enable them to fish in a particular district or area?

A No, this was to aid in tabulation of the fishing intensity.

Q Would it have been a violation of the regulations to fish without this registration?

A Yes.

Q Was the registration required of all fishermen that wanted to fish in any of the waters in Cook Inlet which you have described?

A Yes.

MR. CHARNEY: I object. The regulations would be—

[14] Q All right. Did you enforce the licensing requirement, or the registration requirement, as to any fishermen fishing the waters in Cook Inlet as you have described?

A Yes.

** See correction by witness, page 26.

Q Did you ever observe any foreign fishing vessels in Cook Inlet—let me qualify that—fishing in Cook Inlet?
A No.
Q Did you ever observe any Canadian halibut boats fishing in Cook Inlet?
A No.
Q Did you observe any Canadian Halibut vessels, other than those fishing in Cook Inlet—
A No. Well, say that again?
Q Did you observe any Canadian vessels that may not have been fishing in Cook Inlet?
A Yes.
Q Where did you observe them?
A I have seen them at anchor in Seldovia Bay, and I have seen them fishing offshore east of Chugach Islands.
Q By "offshore" do you have any idea as to how many miles offshore, with reference to more than three or less than three?
A Well, it could have been probably between three and five, somewhere around there. Those were just seen by me from airplanes. We didn't bother them. We didn't do anything [15] more than see that they were out there.
Q Now, were you ever given any instructions, either written or oral, with regard to a policy which should be followed with respect to Canadian halibut fishing vessels in Cook Inlet?
A No.
Q At any time in your experience in Cook Inlet, were you aware of any policy regarding Canadian halibut vessels fishing in Cook Inlet?
A No.
Q Do you recall ever having a discussion concerning such a policy with anyone?
A No.
Q Did you have annual conferences or meetings of the persons involved in the law enforcement in the Fish and Wild Life Service of Alaska?
A Yes.
Q Was this matter ever discussed at those meetings?
A Not that I can remember. I think I only attended one of them, though.

Q And that is—when would you have attended it?
A 1969, I think.
Q 1969?
A 1959.
Q Were you prior to that time given any instructions from [16] either Jack Skerry or Holger Larsen regarding this matter?
A No.
Q Or by anyone else?
A No. All I can remember about what we did, or what I did with regard to halibut fishing was to make sure no one jumped the gun on the season, and once in a while check the boats at Seldovia to see that they weren't selling undersized fish.
Q But this was with regard to Americans, is that right?
A Yes.

• • • •

[22] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Did you receive training by the Federal Government to prepare you for your enforcement duties in Cook Inlet?
A We were just lectured by the—by the agents in charge—before going out on the job.
Q This would have been Holger Larsen and Jack Skerry?
A Yes. And in some cases others, too.
Q Now, with regard to these Canadian halibut vessels which were waiting out their closed period, you thought you heard, [23] for fishing in Seldovia Bay, did you receive any information that these boats were going to be fishing for halibut in Cook Inlet?
A No.

• • • •

[3] ROBERT T. YINGLING

a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having

been duly sworn by the notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your full name, please?
A Raymond Thomas Yingling.
Q What is your present address?
A 4000 Massachusetts Avenue, Northwest.
Q Washington, D. C.?
A Yes.
Q And what is your present occupation?
A Oh, I am doing a little bit of practice, that is all.
Q I see.
A A little consulting in a case once in a while, if I can't get out of taking it.
Q What is your age?
A 73.
Q Now, have you ever had any occupations with the Federal government?
A Yes. I was with the State Department for, oh I [4] don't know, 49 years. I was with the Federal government a little more than 49 years when I retired in 1968.
Q What was your first position with the government?
A I don't really know. I mean it was a summertime thing.
Q I see. But you most of the time have been employed—
A I came to State in '20. Yes, October 1920 I came to State and I was with State until I retired in January 1968.
Q Were you ever with the office of Legal Adviser of the Secretary of State?
A Yes, I was Assistant Legal Adviser for many years.
Q When did you first take that position, do you recall?
A Well, when the office was reorganized and the position of Assistant Legal Adviser was set up, I was one

of the original Assistant Legal Advisers and I held that title until I retired. This may be probably 20 years.
Q So, roughly, sometime around 1948 or so?
A Sometime after the war.
Q You do have a law degree, then?
A Yes. I may have a couple of them; I don't know.
Q Where did you have your legal education?
A Georgetown University law school.
Q All right. Now, directing your attention to May 3rd [5] of 1962, what was your occupation?
A Assistant Legal Adviser.
MR. CRANSTON: Would you mark this as Exhibit 1 for this deposition, please?

(Letter dated May 3, 1962 from Abram Chayes to Frank Barry was marked Defendant's Exhibit 1 for identification.)

BY MR. CRANSTON:

Q All right. A letter dated May 3, 1962 from Abram Chayes, the Legal Adviser, to Frank Barry, Solicitor of the Department of Interior, has been marked as Defendant's Exhibit 1 for this deposition.
Mr. Yingling, I will hand you what has been marked as Exhibit 1 and I ask you if you recognize that.
A Yes, I do.
Q Would you tell me what the basis of your acquaintance with this letter is?
A I drafted it.
Q All right. Now, by drafting it, exactly what work of your own did you put in it to draft it?
A Well, I think the letter speaks for itself as to what work was done and what work was necessary to do to reach those conclusions.
[6] Q Specifically, did you do the work yourself, the research for this letter, or did someone else do the research?
A Do you have any specific research in mind or are you talking generally?
Q Generally, the research which formed the basis for this letter.

A I did some of it and some of it was done by an assistant.

Q Do you recall the name of the assistant who may have done this?

A No. No.

Q Would it have been an assistant Legal Adviser or someone else?

A No, it would have been somebody of lower rank.

Q I see. And you have no idea who this person may have been?

A I don't, because the number of my assistants varied from time to time and sometimes I had other people assigned to me who were not regularly assigned to me, who were assigned to me for some specific job like this, for instance. I mean we might have picked some young fellow out of the office and let him do this job. I can't answer that because this is over too long a period of time and these things varied too much.

[7] Q I understand we are talking about something that took place ten or so years ago.

A Yes.

Q Would the name of the person who assisted you in writing this letter be disclosed in any of the files of the Legal Adviser, do you think?

A It would be if he made a report in writing to me. The research that is referred to in this letter as involving the past records of the Department and the records of the National Archives was not done by me. The person who did that may have made some kind of memorandum report to me. I don't remember. He did make an oral report to me. My memory isn't clear as to whether he made a written report.

It is a completely negative thing, as you see by the letter, and it wouldn't have been much of a memorandum to write on it execpt to say what he did, and he found nothing.

Q Would it be normal for a written report or memorandum to be made to you with respect to research done by a legal assistant?

A Yes, if they found anything.

Q I see. And if they found nothing as a result of their research they would not make a report, is that correct?

A I didn't say they wouldn't; but they might not. [8] All I said was that in this particular instance I did not remember whether a written report was made. There was an oral report made.

Q I see. All right. Now, one rather preliminary question. So far as you are aware did the Legal Adviser himself, that is, Abram Chayes, do any of the research in respect to this letter?

A I think that is a question you had better ask Abram Chayes. I don't think that is a proper matter for me to comment upon.

Q Do you know the answer or are you saying you are refusing to answer the question?

A I am saying I don't think it is a proper question for me to answer.

MR. CRANSTON: Well, Mr. Charney, I feel as if what is proper or not proper should be—

MR. CHARNEY: Can I speak to the witness off the record?

MR. CRANSTON: Yes.

(Off the record discussion)

THE WITNESS: Ask me the question again, please.

(The pertinent question was read)

THE WITNESS: He did not.

BY MR. CRANSTON:

[9] Q I take it then, with reference to this letter, you were the person in the office of the Legal Adviser who had the primary responsibility for its drafting and content, would that be correct?

A That is right, yes.

Q All right. One other question. You were served, I believe, with a subpoena duces tecum—

A Yes.

Q —asking you to produce whatever records you had which were used to form the conclusion of this letter,

particularly, with reference to the records discussed in paragraph 2 of this letter. Do you have any records with you?

A No, I don't have any records at all.

Q And I take it that you kept no personal file with respect to any of the matters which you worked on while with the Office of Legal Adviser insofar as it affects this letter?

A I did not.

Q Now, referring to paragraph 3 of this letter where it refers to "an extensive search of the records of the Department" could you tell me what records of the Department were searched by you or by whoever did this search for this letter?

A Well, the Department has a record section. I don't know what it is called now. The person went there and tried to [10] find anything that was there that related to this question. Since the Department's records are retired after a certain number of years to the National Archives, he also went to the National Archives and searched for past years.

Q I see. Now, did the individual who made this search make any specific report to you orally or in writing relative to what files he did search?

A No.

Q So you are not aware yourself of what particular records were searched of the Department insofar as those records are described in paragraph 3 of this letter?

A No, not when you say "particular records."

Q Well—

A Can I go off—

Q Well, records in general. What records were searched? Do you know anything about what was looked at?

A No. I sent him to do the research and he did the research and reported to me. I don't know what he saw or what he didn't see.

Q Let's try to pinpoint it a little more. Was the search limited solely to records either in the possession of the State Department or State Department records which are now located in the National Archives?

[11] A Well, both.

Q All right. By that, I am trying to determine whether you know if records of any other Federal department were searched and looked at in order to form the basis of the conclusion in this letter.

A I don't know as a certainty because I didn't do the research, and I didn't ask that kind of question of the person who did. But I assume that he examined the State Department's records only, both in the Department, that is, the records still in the Department and the ones that had been retired to the National Archives. I wouldn't have expected him to search some record that had been filed there by the Internal Revenue Bureau, for instance.

Q What about, for instance, would you have expected him to search records of any other Federal departments such as the Department of Interior or any agency of the Department of Interior or Department of Commerce?

A No, not if those records are segregated. I don't know whether they are or not. I am not familiar with the National Archives' records, but if they are segregated according to departments I would not have expected him to look at anything but the State Department's records, because the letter from the Department of Interior was asking us to indicate the [12] State Department's view about these questions that had been raised.

Q I see.

A However, normally this type of thing is a matter that would have been handled by the State Department, not by the Department of Commerce or the Department of Justice.

Q You do not recall, then, any indication from the person who did the research that anything other than State Department records themselves were looked at in order to form the basis of this letter?

A I don't recall that anything was said about that.

Q All right. Did you yourself do any research in order to verify or supplement the work done by the assistant in this matter?

A No.

Q Did you look at any records of any Federal department other than State Department records?

A No.

Q And, I take it then, you did not look at any State Department records either?

A Not on that question. No, not on the matters referred to in that third paragraph on page 2.

* * * *

[15] Q In other words, the research that you did was research into such legal documents such as the case reports, perhaps, treatises, digests, and I suppose other legal aids which an attorney would normally look at, is that correct?

A That is correct.

Q Your research legally was confined generally to things such as that, I take it.

A Well, I don't know that I can say what it was confined to. I handled the Law of the Sea in the Department and had principal responsibility for it from 1950 until 1968 when I retired. Now, obviously there are some things I don't need to look up or don't need to research.

[16] Q But, your active participation with respect to the conclusion in this letter was based upon legal theory rather than factual discovery? This is what I am trying to get at.

A Yes.

Q Then, insofar as the facts which may have formed the basis or which would bear on the issue of Cook Inlet's being an historic bay, this was left by you to the legal assistant.

MR. CHARNEY: The record should indicate he said yes.

THE WITNESS: Yes.

* * * *

[18] Q My question is, approximately how long before May 3rd of 1962 was the letter from Mr. Barry received by your office?

A Well, the letter indicates that his letter was dated [19] April 17th.

Q All right. So—

A It would have been received maybe in a day or so after that.

Q So, that would indicate to me that approximately two weeks of research went into the formulation of the response to his letter, is that correct?

A Well, whatever the elapsed time there is, yes, two and a half weeks or whatever it is.

Q Now, approximately how long before May 3rd was, in essence, the final draft of this letter placed in your hands? In other words—

A It was my letter.

Q The letter is dated—

A I drafted it. You said the final draft placed in my hands.

Q Okay. Approximately when was all of the information from the legal assistant placed before you in order to enable you to form the conclusion of this letter?

A I don't know.

Q Would it have been a week before the drafting of the letter?

A No. I would just be guessing at that because I don't [20] remember. I mean, that is years ago. There was three weeks elapsed from the time, two and a half or whatever the records show, from the time the letter was received until I answered it. I don't know what day the assistant who did the research at Archives, for instance, gave me the results of his research. I don't know what day I drafted the letter, unless a carbon would show.

* * * *

[24] MR. CRANSTON: I am going to hand to the reporter for identification, as Deposition Exhibit 2, a letter dated July 3rd, 1969 from the Office of Legal Adviser to Mr. Shiro Kashiwa.

(Letter dated July 3, 1969 from Office of Legal Adviser to Mr. Shiro Kashiwa was marked Defendant's Exhibit No. 2 for identification.)

[25] BY MR. CRANSTON:

Q Mr. Yingling, I am going to hand you what has been marked Deposition Exhibit 2, a letter to Shiro Kashiwa, dated July 3, 1969 and ask you if you have any knowledge of that letter?

A I have seen a copy of that letter but that was after I left the Department. I had no knowledge of it until fairly recently when I saw a copy of it.

Q I take it by your answer then, you had nothing whatsoever, apart from the reference, of course, to your earlier letter, you had nothing whatsoever to do with the formulation of the conclusions disclosed in the letter dated July 3rd, 1969?

A Nothing.

* * * *

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